Public Utilities FORTNIGHTLY

August 28, 1947

CO-OP TAX EXEMPTION: A THREAT TO FREE ENTERPRISE
By the Honorable Paul W. Shafer
United States Representative from Michigan

‹ ›

Financing by Lease
By Fergus J. McDiarmid

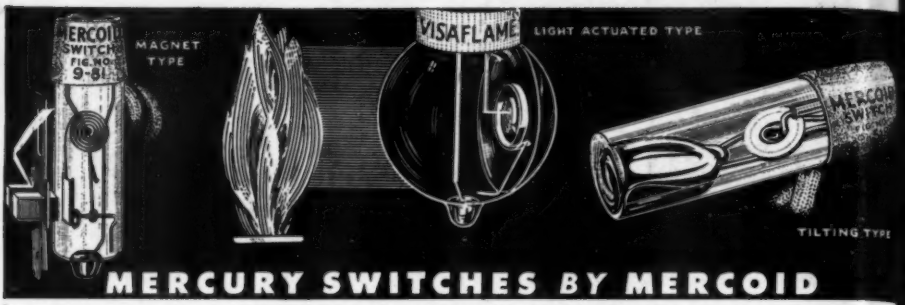
‹ ›

The Story of Clark Hill
By Charles A. Collier

‹ ›

Laws Passed by the 80th Congress, First Session
By Francis X. Welch

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS



MERCURY SWITCHES *BY* MERCOID

HAVE THE ENDURANCE OF PROVIDING

MILLIONS

OF "MAKES" AND "BREAKS" IN THE ELECTRICAL CIRCUIT

THEY ASSURE FULL PROTECTION AGAINST SWITCH TROUBLES

USED EXCLUSIVELY IN ALL TYPES OF MERCOID CONTROLS

DA (Double Adjustment)
Pressure Control

MEANING

BETTER AND MORE DEPENDABLE CONTROL PERFORMANCE INCLUDING MUCH LONGER AUTOMATIC CONTROL LIFE, FOR HEATING AND AIR CONDITIONING EQUIPMENT—ALSO FOR NUMEROUS IMPORTANT INDUSTRIAL APPLICATIONS

THE MERCOID CORPORATION, 4201 BELMONT AVENUE, CHICAGO 41, ILL.

Public Utilities Fortnightly

VOLUME XL *August 28, 1947* NUMBER 5

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Utilities Almanack 265
Vital Wheel of Industry ..... *(Frontispiece)* 266
Co-op Tax Exemption: A Threat to Free Enterprise ... *Hon. P. W. Shafer* 267
Financing by Lease ..... *Fergus J. McDiarmid* 278
The Story of Clark Hill ..... *Charles A. Collier* 285
Laws Passed by the 80th Congress, First Session ..... *Francis X. Welch* 292
Washington and the Utilities 298
Exchange Calls and Gossip 301
Financial News and Comment ..... *Owen Ely* 304
What Others Think 308

EEI *Statistical Bulletin* Reveals Industry's Growth and Plans
Impact of Federal Income Tax a Threat to Private Power Industry
Governmental Expenditures Grow Apace
A Call for Government Power Policy

The March of Events 316
The Latest Utility Rulings (selected preprints of Cases) 323
Public Utilities Reports 329
Titles and Index 330

Advertising Section

Pages with the Editors 6
In This Issue 10
Remarkable Remarks 12
Industrial Progress 21
Index to Advertisers 32

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS
Publication Office ..... CANDLER BUILDING, BALTIMORE 2, MD.
Executive, Editorial, and Advertising Offices ..... MUNSEY BUILDING, WASHINGTON 4, D. C.
(Address all communications concerning the FORTNIGHTLY *to Munsey Building, Washington 4, D. C.)*

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series*, such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1947 by Public Utilities Reports, Inc. Printed in U. S. A.

PRICE, 75 CENTS A COPY ANNUAL SUBSCRIPTION, $15.00

Pages with the Editors

IT is now more than one hundred years since the first successful commercial coöperative was launched in England—known as the Rochdale experiment. During that time the coöperative movement throughout the world has encountered various degrees of success and failure. It has been practiced enough, however, to establish certain fundamental characteristics.

FIRST, there is the native tendency of the coöperative movement to thrive principally in the simpler "grass-roots" type of enterprise, such as agricultural marketing, purchasing, and servicing for co-op members. In this setting, the rural co-op can not only do a good job for its members, but in some situations can perform a service which would not otherwise be performed, because of the limited opportunities for profit—making it unattractive for regular commercial exploitation.

© *Harris & Ewing*

PAUL W. SHAFER

BUT a change has come over the coöperative movement in the United States during the past decade—a change which can almost be traced mathematically to the rising tide of taxation, particularly Federal income taxes. Co-ops in the United States have become Big Business. They no longer confine themselves to simple pastoral pursuits. They can and do engage in some of the most technical types of industrial operation.

THE conclusion is inescapable that this growth has been brought about by the exemption, widely enjoyed by the co-ops, from many of the Federal and state taxes which private business enterprise must pay. To that extent there arises the natural suggestion that private business is being forced, by such tax policy, to subsidize its own competition from tax-exempt coöperatives which do not bear their proper share of the tax load.

WHEN we see large business corporations finding it to their advantage to dissolve their corporate form and go in for large-scale coöperative organization, there is more than a faint suspicion that the co-op status can be made the vehicle for plain ordinary tax dodging, and that it may be approaching a sort of racket. A congressional group is expected to study this angle at the next session of the 80th Congress when it meets this fall.

In the leading article in this issue we have a penetrating analysis of this subject from an influential member of the 80th Congress, Representative Paul W. Shafer (Republican, Michigan). He was born in Elkhart, Indiana, in 1893, and was educated in Michigan. Representative Shafer demonstrated early ver-

C. A. COLLIER

satility through the successful practice of two professions, law and journalism. He was a reporter, editor, and publisher between 1912 and 1929, and became municipal judge at Battle Creek, Michigan, between 1929 and 1936. He was elected to the 75th Congress from the Third Michigan Congressional District in 1936 and has served continuously in the House of Representatives since that date. During World War I he served abroad as a military writer and has been active in affairs of the Veterans of Foreign Wars. He is a member of the Armed Services Committee.

CHARLES A. COLLIER, whose articles appears on page 285, is not only vice president of Georgia Power Company but also vice president of Savannah River Electric Company, which is trying to have its license reinstated to construct the Clark Hill project in Georgia. He is an engineering graduate of Georgia Tech ('09) and has been with Georgia Power thirty-eight years.

THE Russian magazine *Bolshevik* recently made some interesting claims regarding the historical achievement of Russian nationals in the fields of science and invention. Two of these claims will be especially interesting to two great American utility industries—communications and the electric light and power business, respectively. We Americans, who are under the impression that Thomas Alva Edison invented the electric light and that Signor Guglielmo Marconi discovered the principle of wireless telegraphy, are enslaved by the fallacies of capitalistic error. So claims *Bolshevik*. These two great discoveries, the electric light bulb and wireless telegraph, were fathered and perfected by the Czarist Russian scientist Paul Jablochkov. Credit was thereafter stolen from this genius by the conniving American and Italian capitalists. So says *Bolshevik*.

CLAIMS about inventive genius are, of course, perennial subjects for debate, particularly when they are based on national pride. Many English reference books, for example, will tell you that it was the Scotchman Symington who invented the steamboat and not Robert Fulton. The English books likewise claim that credit for the invention of the telegraph should go to Wheatstone and Cooke and not, as Americans insist, to Dr. Samuel F. B. Morse. French reference books will tell you that the invention of moving pictures was a combination of the work of du Hauron, who filed patents on a moving image projection device in 1864, and the Lumière brothers of Lyons, who perfected such a device in 1895. The Germans say Jatho invented the airplane in 1903.

So on and on. A good many of these claims have plausible arguments to support them. But to contend that the humble carbon arc light "candles" which Jablochkov brought out in 1876 were anything like a scientific anticipation of the work of either Edison or Marconi shows how far ideological chauvinism can distort common sense. The most unreasoning pride of all, says Schopenhauer, is not nationalistic pride. Poor Jablochkov, who died in poverty, scorned by his own government, in 1894, would probably be the first to agree.

THE next number of this magazine will be out September 11th.

The Editors

In This Issue

In Feature Articles

Co-op tax exemption: a threat to free enterprise, 267.
Growth of coöperatives causing heavier tax burden, 268.
Wave of prosperity big factor in growth of co-ops, 269.
Co-ops have become "big business," 270.
Coöperatives have spread into interlocking corporations, 272.
No business is too big or too little for coöperatives to handle, 273.
Profits or gains of a coöperative not truly profits, 275.
Profit of coöperative attributable to patronage of members, 276.
Financing by lease, 278.
Plan applies to utilities, 279.
Terms of the lease, 280.
A comparison of financing costs, 281.
Some questions, 282.
Life insurance company is good landlord, 283.
The story of Clark Hill, 285.
The War Production Board refused priorities, 287.
Army Engineers have proceeded in haste to begin construction, 289.
Development of this project will contribute to the upbuilding of the area, 290.
Laws passed by the 80th Congress, First Session, 292.
Laws actually passed, 293.
Appropriation laws, 294.
Bills that failed, 295.
Inactive bills, 296.

In Washington and the Utilities

Interior passing the hat, 298.
British crisis to slow socialization, 299.
Anticlosed shop test, 299.
Industry gas rate figures, 300.
Miscellaneous, 300.

In Exchange Calls and Gossip

FCC turnover likely late this year, 301.
Long Lines moves for CIO-CWA showdown, 301.
Robbing Peter to pay Paul, 303.

In Financial News

Electric utilities' return on rate base not excessive, 304.
Some electric rates are increasing, 306.
Monthly utility gas sales (chart), 307.

In What Others Think

EEI *Statistical Bulletin* reveals industry's growth and plans, 308.
Impact of Federal income tax a threat to private power industry, 309.
Governmental expenditures grow apace, 312.
A call for government power policy, 314.

In The March of Events

Power shortage rumors untrue, 316.
FPC jurisdiction dropped in independent sales, 316.
Opposes tidelands decision, 316.
News throughout the states, 317.

In The Latest Utility Rulings

Bankruptcy rules inapplicable to reorganization of solvent holding company, 323.
Reproduction cost prevails over low purchase price, 323.
Court refuses to pass on question of rate discrimination, 324.
Percentage added to plant investment to reflect higher costs, 324.
Court asserts power to review basis for rates, 325.
Race track news telephone service discontinued, 326.
Motor carrier partly under state control, 326.
Proceeding before Civil Aeronautics Board stayed, 327.
Higher rate beyond city line, 327.
Foreign air carrier operation authorized, 327.
Miscellaneous rulings, 328.

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 65–96, from 69 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EARL WILSON
U. S. Representative from Indiana.

"If you pursue the policy of public *versus* private enterprise, we will soon find this country economically on the direct path to national Socialism."

E. E. JOHNSON
Engineering manager, General Electric Company.

"The predictions for the future of nuclear, or atomic, power have been so fantastic and exaggerated that the reality will undoubtedly seem pretty unspectacular."

ALFRED SCHINDLER
Former Under Secretary of Commerce.

"'Isms' do not fatten on full stomachs. The best way to combat negative 'isms' is not to denounce them but to remedy the condition in which their agitation thrives."

EARL BUNTING
President, National Association of Manufacturers.

"Profits will be the motivation and the means by which plants will be built, tools will be made, products will be invented and developed, and jobs will be provided."

ALFRED P. SLOAN, JR.
Chairman, General Motors Corporation.

"The existing policy of taxing business profits, and again those that receive the same profits as individuals, should be changed. Double taxation should be eliminated."

EUGENE G. GRACE
Chairman, Bethlehem Steel Corporation.

"I am optimistic about the next twenty years, provided we face facts. The road ahead is going to be competitive. No company is going to get a free ride, no one can afford to coast."

EDITORIAL STATEMENT
The Wall Street Journal.

"If employers and employees can deal with each other on a basis of equality, there will be real collective bargaining. The obstacles have been the government and national leaders who were more concerned with their own power or with a 'class struggle' than with production and wages."

THOMAS E. DEWEY
Governor of New York.

"Our country is one of the few nations on earth where everyone of us is still free to choose his own mode of life, to think, to speak, to worship as he will. We still have the unique privilege in this country of electing at regular intervals those who will represent us in government, and we have the priceless privilege of knowing that if we don't like them we can put them out of office on a given date in the comparatively near future."

EDITORIAL STATEMENT
The Columbia (South Carolina) Record.

"The antitrust law forbids collusion among manufacturers to raise prices, but industry-wide wage increases may produce industry-wide price increases, defeating the purpose of the antitrust law."

BREHON SOMERVELL
President, Koppers Company, Inc.

"Representatives of management are on trial. You and I must prove that we can conduct our businesses to provide a stable economic system that is satisfactory to the American people as a whole. We must recognize that investors, customers, and employees alike have a vital interest in the way the great industrial institutions of America are conducted."

HAROLD E. STASSEN
Presidential candidate.

"If we develop a broad understanding of our economic system, if we decentralize the administration of governmental programs so that they retain a local flexibility and a responsibility close to the people, if we vigorously defend private ownership and oppose centralization of governmental power, then I do believe that there is strong grounds for confidence in the future strength of the American economic system."

DAVID LAWRENCE
Columnist.

"What Henry Ford represented was the creative industrialist whose genius meant the making of jobs in a big industry and the building of a business which directly and indirectly contributed tremendous payrolls of employment as well as taxes to the American economic system. There is not much urge today to try to follow in Henry Ford's footsteps—the tax laws adhere to the pattern of socialistic philosophy that success must be penalized."

EDITORIAL STATEMENT
The Journal of Commerce.

"The public utility status must apply to labor relations, as to other phases of utility operation. Once the paramount obligation to provide continuous service to the public has been recognized by labor as well as management, then machinery for settling utility labor disputes can be evolved through compulsory arbitration, mediation by regulatory commissions, or collective bargaining backed by the pressure of public opinion upon both sides to resolve disputes reasonably."

ROSWELL MAGILL
Former Under Secretary of the Treasury.

"The one effective way to reduce the budget is for Congress to set a figure for the particular department or agency or bureau; to ask it for a program of expenditure within the assigned total; and to require the department or agency or bureau to adhere to that program. The head of the bureau knows better than anyone else where cuts can be made. He will do the job only if he has to; for he shares the normal human desire to expand his agency and make it bigger and better."

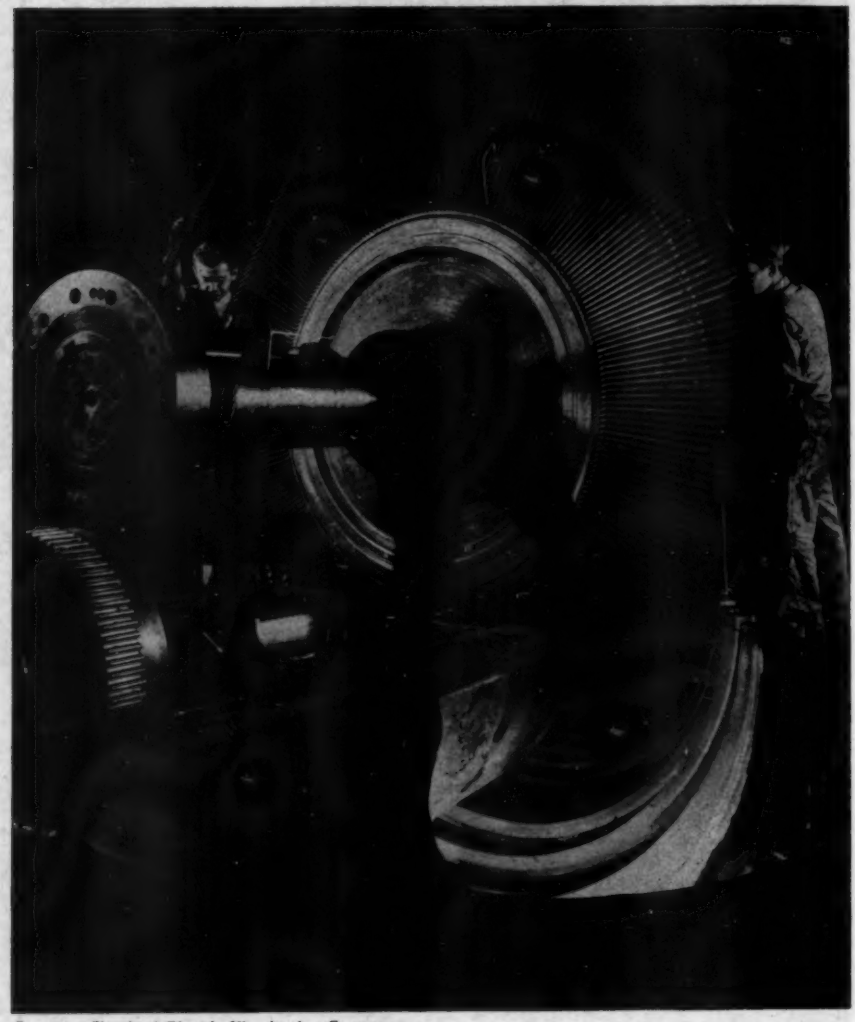
Utilities Almanack

August

28	Th	¶ *National Butane-Propane Association will hold annual convention and trade exhibit, St. Louis, Mo., Sept. 15–17, 1947.*
29	F	¶ *Michigan Independent Telephone Association will hold meeting, Lansing, Mich., Sept. 17, 18, 1947.*
30	Sa	¶ *Indiana Electric Association will hold meeting, French Lick, Ind., Sept. 17–19, 1947.*
31	S	¶ *American Water Works Association, Michigan Section, will hold meeting, Bay City, Mich., Sept. 18–20, 1947.*

September

1	M	¶ *American Society of Mechanical Engineers begins meeting, Salt Lake City, Utah, 1947.*
2	Tu	¶ *Oklahoma Utilities Association, Gas Division, will hold annual conference, Oklahoma City, Okla., Sept. 19, 1947.*
3	W	¶ *Rocky Mountain Independent Telephone Association will hold meeting, Salt Lake City, Utah, Sept. 22, 23, 1947.*
4	Th	¶ *American Water Works Association, New York Section, begins meeting, Plattsburg, N. Y., 1947.*
5	F	¶ *American Water Works Association, Kentucky-Tennessee Section, will hold meeting, Louisville, Ky., Sept. 22–24, 1947.*
6	Sa	¶ *American Bar Association will hold annual meeting, Cleveland, Ohio, Sept. 22–26, 1947.*
7	S	¶ *New Jersey Gas Association will hold meeting, Trenton, N. J., Sept. 23, 1947.*
8	M	¶ *Instrument Society of America begins second annual conference and exhibit, Chicago, Ill., 1947.*
9	Tu	¶ *Pacific Coast Gas Association will hold annual meeting, San Diego, Cal., Sept. 23–25, 1947.*
10	W	¶ *Mid-West Gas Association annual gas school and conference ends, Ames, Iowa, 1947.*



Courtesy, Cleveland Electric Illuminating Company

Vital Wheel of Industry

Set in harness and geared to the production of electric power, this 2-ton turbine is reinstalled after overhaul.

Public Utilities
FORTNIGHTLY

VOL. XL, No. 5 AUGUST 28, 1947

Co-op Tax Exemption: A Threat To Free Enterprise

Taxpaying enterprises, declares the author, are being penalized by being made to subsidize, through the very taxes they pay, the tax-exempt existence of coöperatives that are driving private business to the wall.

BY THE HONORABLE PAUL W. SHAFER*
U. S. REPRESENTATIVE FROM MICHIGAN

IN 1939, coöperatives in the U. S. did a business volume of one and one-half billion dollars. In 1947, they will do more than twelve billion dollars in gross business.

That's an increase of almost nine times in only eight years.

Co-ops used to be little business. Now, they are big business—some of them too big, everything considered.

In government, it is not possible to legislate well today—to make good decisions for tomorrow—on what *was* true yesterday. Laws must be passed and the rules administered to fit *existing* conditions.

A lot of Americans, however, still are making up their minds, or failing to make up their minds, about coöperatives on out-of-date facts. They are not fully informed about the situation of today and what is almost sure to happen if certain laws aren't changed.

Tax-exempt coöperatives today

*For personal note, see "Pages with the Editors."

represent a threat to the solvency of our government, to our system of free enterprise, and, indeed, to our whole future as a representative republic. It is conceivable, if the coöperative movement, as it is constituted today, is not stopped, that the impetus this movement has received in recent years will shove it into a dominating position in the future.

Comparing the volume of business done by private, taxpaying concerns and nontaxpaying coöperatives hardly is a way of arriving at a correct picture of coöperative success in America. It is true that coöperatives of all types now do less than 15 per cent of the gross business in the U.S. It is also true—and vastly more important—that the percentage of coöperative business, as compared with the total of all business, has gained every year since 1939.

This trend, unless arrested, can cause irreparable damage to our whole system of free enterprise. It can stunt the growth of private, taxpaying businesses and can serve as a damper to those enterprisers who want to go into business for themselves. It can, in truth, make the entrepeneur the forgotten man in a society that heretofore has encouraged its entrepeneurs and boasted of their successes.

THE growth of coöperatives already is causing a heavier burden of taxation to fall on private, taxpaying businesses and individuals. Somebody has to pay the thirty-five billion dollars we need to operate the Federal government in 1947. If the coöperatives successfully dodge their share of this load, that makes it harder on the remainder of us.

In other words, taxpaying enterprises are being penalized by being made to subsidize, through the very taxes they pay, the tax-exempt existence of coöperatives that are driving private business to the wall.

I would be the last person in the world to claim that the great majority of men and women who favor continued tax exemption of the coöperative movement are ardent Communists. But it hardly can be denied that this movement, carried to its logical conclusions, would play right into the hands of the Communists. And not even the co-op leaders themselves will maintain that the Communists do not support and propagandize for co-ops at every opportunity. There *are* known Communists who hold important positions in national coöperative associations.

Likewise, it is doubtful that most co-op zealots and leaders are Socialists. But supporters of co-ops have a difficult time disassociating themselves from the Socialists.

A PLANK in the platform of the American Socialist party reads as follows:

> Consumer coöperatives are not merely a means to the Socialist end, but are a part of that end. Socialists will, therefore, use every effort to build coöperatives, both as an immediate need of today and a major part of the world tomorrow.

That is why I must confess that I agree with Ben C. McCabe, president of the National Tax Equality Association, who is leading the fight against tax exemption for co-ops, when he says:

> Eventually this nation, like many others throughout the world, will be called upon to decide whether it shall cling to its long-established system of individual opportunity, or whether it will adopt the system of collectivism toward which it is being dragged by coöperation.

CO-OP TAX EXEMPTION: A THREAT TO FREE ENTERPRISE

The average American little realizes the astounding growth of coöperatives in recent years. Although only a few short years ago almost all co-ops were in the agricultural field and represented comparatively small efforts, today's co-ops do business in a variety of fields ranging from cotton to cosmetics, from apple growing to tractor manufacturing, from distributing electric power to processing lumber.

It is no longer difficult to find a field of endeavor in which a coöperative is active. It is more difficult to find a field in which co-ops are not active. In the farm areas, most frequently, co-ops are producer coöperatives. In the city areas, they are consumer coöperatives. It is not the growth of the co-op movement, as such, which gives us concern. It is the reason behind that mushroom growth. If it were sound, healthy, self-supporting, taxpaying growth, there would be little quarrel with it. But if it is like the mushroom, a parasitic growth draining and sapping the strength from our healthy members, that is something else, again.

THE wave of war and postwar prosperity has been a big factor in the recent phenomenal growth of co-ops. But an even more potent factor has been the steady rise in taxes—for every form of business *except co-ops.*

The exemption from Federal income taxes enjoyed by co-ops represents a huge help in operating a business today. Yet, it is only one of the ways Uncle Sam is helping co-ops, and thus not only cutting his own fiscal throat, but helping to run taxpaying enterprises out of business.

Congress, which now is investigating the privileges government has been giving to co-ops, never has had an antipathy toward the coöperative form of business for small groups. As a matter of history, Congress passed the Capper-Volstead Act twenty-five years ago to give farmers the right to sell collectively, and set up the Central Bank of Coöperatives fourteen years ago to lend money at low rates of interest to farmers and others who had formed voluntary buying and selling associations.

What Congress wants to do is to find out, now that many coöperatives have grown into huge combines bordering on monopolies, why this form of business enterprise should not pay its way along with all other forms of business endeavor. Historically, Congress helped the railroads get started, but the mere fact that Congress later made the railroads pay heavily in taxes did not mean an antipathy to rail travel. Likewise, Congress wisely subsidized many new industries in America, but once these industries became big enough to be "on their own," Congress

¶ "TAX-EXEMPT *coöperatives today represent a threat to the solvency of our government, to our system of free enterprise, and, indeed, to our whole future as a representative republic. It is conceivable, if the coöperative movement, as it is constituted today, is not stopped, that the impetus this movement has received in recent years will shove it into a dominating position in the future.*"

did not hesitate to see that they paid their just share of the tax burden.

COÖPERATIVE leaders themselves recognize that they have become "big business," but they continue to becloud the issues and to insist on going through the revolving tax door on the other fellow's push. Here is a statement from a bulletin to members of the National Association of Coöperatives:

> This tax fight is going to be a fight to the finish. . . . A day of reckoning lies ahead. Never again is it likely that co-ops will be permitted to go their own way, minding their own affairs with the rest of the business world oblivious to their existence. . . . Coöperatives have arrived. They must accept the burdens and tribulations which inevitably attend success. . . . Our first and greatest need is to set our house in order. It is no longer possible to blandly assert that all co-ops are lily white on income taxes.

This would appear to be a recognition of blunt realities, but, if so, some co-op leaders have set about facing realities in a very unusual way. They often issue misleading statements and propaganda assailing members of Congress who do not agree with them in every detail. They seem to be obdurate in their refusal even to consider arguments for changes in tax laws and Federal administrative procedures. They resemble the misguided labor leaders who, in their blind opposition to recent labor law changes, defeated their own purpose by renouncing an opportunity to participate in the drafting of such needed reforms.

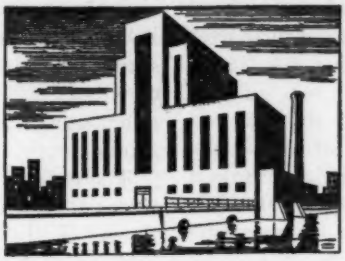
But the plain facts of the situation are becoming more and more apparent to Americans. As these facts become clear, the demand for changes will be overwhelming and Congress will have to reason why most coöperatives should not pay all taxes, their propagandists to the contrary notwithstanding.

CONGRESS' investigation of co-op growth and the tax policies of the Federal government are for the purpose of getting the answers to the following questions:

1. Can private enterprise pay 38 per cent Federal income tax on profits and survive against competing coöperatives which pay from zero to 12 per cent?
2. Are coöperatives, which now are expanding into almost every possible kind of enterprise, violating the spirit if not the letter of the law which exempts from Federal income taxes only farmers, fruit growers, and individuals and businesses in related lines?
3. Is the U.S. Treasury discriminating in favor of coöperatives in exempting from taxation the funds accumulated and used to expand old businesses and buy new industries, while private industry must pay taxes on funds similarly accumulated?
4. If coöperatives continue to expand and take over an increasing area of private industrial enterprise, what provision will be made to pay the taxes necessary to maintain the government —an increasing burden which is becoming more difficult for a relatively shrinking area of private enterprise to bear?

The exemption of coöperatives from Federal income taxes has resulted in scores of industries, unable to compete with tax-free co-ops, selling out to the coöperatives, or changing over into co-ops themselves, at a cost of millions of dollars in revenue to the U.S. government.

ONE noteworthy instance of such a voluntary change of status by a private group to come to my attention



Co-op Expansion Increases Tax Bill

"THE growth of coöperatives already is causing a heavier burden of taxation to fall on private, taxpaying businesses and individuals. Somebody has to pay the thirty-five billion dollars we need to operate the Federal government in 1947. If the coöperatives successfully dodge their share of this load, that makes it harder on the remainder of us."

is that of the California & Hawaii Sugar Refining Corporation of Crockett, California, one of the world's largest sugar refineries. Prior to 1926, this was a private enterprise, owned and operated for profit by twenty-six Hawaiian sugar plantation corporations. Sugar, the chief crop of Hawaii, is produced and controlled by thirty-eight sugar plantations, of which twenty-six own and operate the refinery.

In 1926, California & Hawaii Sugar Refining Corporation changed over to a co-op. But it still is owned and controlled by the same twenty-six Hawaiian sugar-producing corporations.

Up to 1929, the refinery had paid in more than $1,000,000 in Federal income taxes on its profits. In 1929, the U.S. Treasury granted an exemption from Federal income taxes to the new "co-op" and it has not paid a dime in income taxes since that time. Neither has it paid any excess profits taxes. It does pay other taxes. Its property tax and excise taxes in 1944 alone amounted to $6,695,465.84, but there was no accounting to the Federal government of its "earnings," no payment of Federal income tax.

THE changeover aroused such a furor in Congress that John N. Garner, then Speaker of the House, later Vice President, took to the floor of the House to declare:

> You can see just what is happening since the Congress undertook to exempt from taxation coöperative farm organizations in this country.
>
> These corporations have organized for the purpose of avoiding payments of income taxes and the records show they are making millions of dollars, and up to 1929 had paid more than $1,000,000 in income tax.

There are hundreds of similar examples; and hundreds of other cases of coöperative organizations buying

out privately owned, taxpaying business, which formerly had paid Federal income taxes, and changing them over to "co-ops," thus securing tax exemptions on "earnings."

For instance, in 1943, the Farmers' Union Grain Terminal of Minnesota, a co-op, bought the St. Anthony & Dakota Elevator Company for $2,700,000. It had been a taxpaying company for many years.

In 1944, under co-op operation, the elevator company had "earnings" of $449,583.98. But it paid no Federal income tax on these earnings. Any privately owned elevator company with such earnings would have had to pay such taxes that year to the tune of at least $292,000.

Private industries and corporations have built vast empires in American business. In all their operations, they have had to pay income taxes, and, more recently, excess profits taxes, based on profits made above an "average" of several prewar years.

COÖPERATIVES, meanwhile, have spread out into vast interlocking corporations, spreading over many states, but they are exempt from payment of Federal income taxes on their "earnings."

Let's take a look at some more of their activities.

In 1942, regional coöperatives of Indiana, Iowa, Minnesota, Nebraska, Wisconsin, Missouri, Ohio, Pennsylvania, Michigan, Washington, and Canada formed the National Farm Machinery Coöperative.

One of its first actions was to take over the ill-fated Arthurdale (West Virginia) co-op farm tractor plant. Arthurdale, it will be recalled, was one of the "Tugwelltowns" of the early New Deal, particularly favored by Mrs. Franklin D. Roosevelt. Uncle Sam had spent hundreds of thousands of dollars on this adventure in community planning, but without success, and the co-op group bought the tractor plant.

The coöperative didn't try to manufacture the tractors there. It bought, instead, a Shelbyville (Indiana) farm implement factory, where it put the tractors into production.

For their tractors, co-op members had to have plows, cultivators, and other accoutrements, so, in 1944, the organization bought the Ohio Cultivator Company's plant at Bellevue, Ohio, paying a reported $1,000,000.

In its last year as a private industry, Ohio Cultivator had paid $196,000 in Federal income taxes. Since that time, as a co-op enterprise, it has not paid Uncle Sam one thin dime.

National Farm Machinery Co-op also owns the Corn Belt Manufacturing Company plant at Waterloo, Iowa, also formerly a privately owned, taxpaying industry. It produces farm implements in competition with the nation's other taxpaying, private industries in the same field today, but pays no taxes.

Consumers Refineries Co-op bought out two refineries at Coffeyville, Kansas, and Scottsbluff, Nebraska, paying $5,000,000. National Coöperative Refinery Association paid $5,000,000 for the Glover Oil Refinery at McPherson, Kansas, and Midland Co-op paid $1,000,000 for the Cushing (Oklahoma) Refining & Gasoline Company.

IN the utility field, for just one example, the Wisconsin Hydro Elec-

tric Company was put on the market in 1945 when the Federal government's "death sentence" finally went into effect for one holding company. The Badger Electric Coöperative put in a bid of $3,449,000—$349,000 higher than the next bidder—and purchased the plant. As a private corporation in 1944, Wisconsin Hydro Electric paid $60,000 in Federal income taxes. As a co-op, it would pay none.

The deal is blocked by legal obstructions at this writing, however.

There's no business too big nor too little for the coöperatives to handle.

Fruit Growers Supply Company, a California coöperative subsidiary of the giant California Fruit Growers Exchange, was having difficulty getting boxing material for the fruits grown by the farmers who had founded the exchange, one of the oldest co-ops.

So the company bought out the Red River Lumber Company—and thus acquired also the entire city of Westwood, locale of the lumber concern—at a cost of $11,000,000.

As a private industry, the Red River Lumber Company paid an average of $900,000 a year Federal income taxes for many years. As a co-op, the company now is exempt from taxation.

In contrast with the $11,000,000 paid in this transaction, only $5,000 was the price paid by Union Equity Exchange for a little, one-story grain elevator in Enid, Oklahoma, in 1926.

By plowing its tax-exempt "earnings" back into the business, that tiny elevator has expanded into one of the nation's biggest elevator terminals, with huge, multistoried terminals and elevators capable of handling millions of bushels of grain.

The terminal did $33,548,000 gross business in 1945, with earnings of $830,000. Any private enterprise with such earnings would have had to pay a Federal income tax at the then prevailing rate of 63 per cent, or $559,000, but the exchange paid virtually no Federal income taxes.

The Consumers Coöperative of North Kansas City, Missouri, controls a variety of businesses, ranging from soft drinks to oil wells. It has bought from private industries, or built its own plants, and now has holdings consisting of two canneries, a potato dehydrating plant, a cola bottling works, two sawmills, petroleum and lubricating oil refineries, 270 oil wells, leases on 104,408 acres of oil lands, and 768 miles of pipe lines.

Co-ops have taken over practically all Indiana grain elevator and milling businesses. So great has been the encroachment of co-ops in the Hoosier state that a leading daily newspaper, the Indianapolis *Times*, recently commented editorially as follows:

> Many of them (co-ops) are the biggest businesses in the cities in which they operate.

¶ "The *exemption from Federal income taxes enjoyed by co-ops represents a huge help in operating a business today. Yet, it is only one of the ways Uncle Sam is helping co-ops, and thus not only cutting his own fiscal throat, but helping to run taxpaying enterprises out of business.*"

One in Indianapolis last year reported a business volume of $25,900,000, and another a gross business in excess of $37,000,000 for the year.

They own grain elevators, oil refineries, mills, warehouses, insurance companies, commercial refrigeration plants, fertilizer factories, coal mines, hatcheries, farm implement factories, lumber mills, oil wells and pipe lines, river barges and docks, building materials, production and distribution concerns, livestock marketing organizations, bulk oil plants, wholesale and jobbing enterprises, and retail stores.

The interesting feature about all these businesses is that they pay no Federal income taxes. Coöperatives are exempt from such taxes on the theory that they enable a group of neighbors, especially farmers, to get together and buy and sell coöperatively and thus save themselves a little money.

We haven't any way of knowing, of course, about the profit structure of the two big Indianapolis co-ops we just mentioned, nor any exact means of estimating just how much they save by paying no taxes. A private business doing a gross volume of $25,000,000 a year might be paying as much as $5,000,000 in tax, and some pay more on such a business volume.

Assuming that each of these co-ops did save $5,000,000 in tax last year, just for the purpose of discussion, that would be $10,000,000 saved by these two. But the Federal government hasn't saved anything. It still needs the $10,000,000 to pay its running expenses. So where does it get the money?

Why, it just adds that $10,000,000 right on to the tax bill of the rest of the people in Indianapolis—and they pay it. . . . The taxes they don't pay still have to be paid—they are just shifted to other people.

. . . There is nothing to indicate that coöperatives can do business at any less cost than any well-run private company in the same line.

They have to pay wages, and rent, and all the other running expenses that anyone else has to pay to do business. . . . Their big savings is in taxes. It is a double-barrel saving. It takes the tax cost off their shoulders and adds it to the tax bill of their competitors.

That gives them an unfair competitive advantage over the business that is paying its share—and theirs—of the cost of running the government. That advantage shows up very clearly in Indiana, in the large growth of the co-ops and in the growing number of communities in which their operation has forced their competitors out of business.

THE ability of the co-ops to buy, with tax-exempt earnings, private business and remove it from the taxpaying field, creates an obvious and definitely unfair advantage.

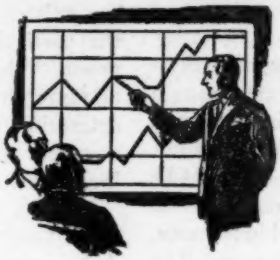
Nontaxpaying groups in the field of public utilities are as numerous as in the farm field. The vast Tennessee Valley Authority and the hundreds of rural electrification co-ops throughout the nation, as well as hundreds of utilities owned by municipalities, are among those not paying Federal income taxes, and thereby obtaining what amounts to favoritism in finance. Obviously, there are no valid reasons why the power consumers of one locality should have to pay a certain amount of income tax and the power consumers of another locality should be exempt from such taxes. Yet, in the rates they pay for power, consumers actually are the subject of discrimination on this particular score.

Naturally, the proponents of such tax-free co-ops, whether in the farm or power or any other field, have some good arguments; otherwise they would have been made to pay their way long, long ago. What are the arguments they use to gain, and hold, the support of gullible people?

Chief spokesmen for the co-ops contend that:

1. Coöperatives are nonprofit businesses.
2. All "earnings," or "savings"—as distinguished from "profits"—belong to the members of the organization, not the coöperative.
3. They do not enjoy special advantages.
4. Payment of high taxes, such as all other businesses have to pay, would destroy the coöperative system.

THE first of these arguments; *i.e.*, that what appears to be a profit really is not that at all because it can



Costs of Doing Business

"ALL taxes on business firms are, in the long run, costs of doing business, regardless of the particular method of assessment. Therefore, to permit coöperatives to escape from costs so heavy as the income taxes are now is a gross discrimination against all other businesses which pay taxes. It tends to destroy the tax base, and leads to the uneconomic employment of the nation's resources . . ."

be made to disappear at will by *reducing selling* prices, or by *increasing buying* prices, rests upon a fallacy in logic. The coöperative form of business has no monopoly over this escape from taxation. Any business can reduce its prices to the point where there is no profit and it will then pay neither income taxes nor excess profits taxes. But the decision to do so is one which affects the *amount* of the profit, not the *nature* of profit. If profits do not exist, they cannot be taxed; if they do exist, they ought to be taxed, no matter who receives them—whether he is a shareholder in a corporation or a member of a coöperative should have little to do with the plain facts.

The second argument; *i.e.*, that the profits or gains of a coöperative are not truly profit, but a "saving," a "surplus," or the "refund of a provisional overcharge," in any case something other than profits, can be accepted only if a coöperative does not trade in its own name. If it acts as an agent or broker upon instructions of its members, it need charge only enough to cover its necessary outlays. But when it buys outright at one price and sells at another, it is certainly a principal in the transaction. That is true of either a producers' or a consumers' coöperative. Whether its management does or does not *wish* to make a profit, or gain, is not material. The members, the directors, and the appointed managers may all be of one mind in wanting only to be of service and to avoid profit like the plague. But the plain fact is that the winning of a profit is the price of survival. Without profit, the coöperative cannot balance its accounts. And if, being legally incorporated and enjoying all the advantages of legal incorporation, of limited liability and of perpetual succession, it makes a profit, it would seem to be in-

evitably liable to corporation income and other taxes.

THE nature of the coöperative dividend now shows up clearly as a device to attract and retain customers from a business organization. It is not a refund. If it were that, it would be an ordinary trade discount whose amount is fixed, announced in advance, and is unchanged for years on end. The coöperative trades as a principal and periodically adds up its accounts, determines the amount of its profits, and then decides how much of that profit shall be paid out in patronage dividends and how much shall be retained to increase the capital with which it trades.

There is little to distinguish the profit margins of the companies purchased by co-ops *after* they have been operated a time by co-ops and in the period *before* they were so operated. In short, the nature of the profit had not changed in the least. Only its description had been changed—and in such a way as to make the latter profit nontaxable, whereas it had been taxable before.

The opportunity to share in profits of a trading operation is one of the prime attractions offered by coöperatives to their members, and naturally, the greater the weight of taxation on others, the greater the rewards of membership in a tax-free coöperative. How the members of the coöperative elect to distribute those trading profits ought to be left for them to decide. But it is not proper that a private decision of that kind should be allowed to govern their public obligations. It is good logic, as well as good law, that it is the source and not the destination which determines whether profits or gains exist. The liability of tax must depend upon the existence of profit and not upon the particular method of using that profit. Who would remain taxable if all taxpayers were allowed the right to determine their own tax status, as members of co-ops, in effect, are allowed to do?

ANOTHER argument heard frequently is that the entire profit or gain of the coöperative venture, trading on its own account, is attributable solely and exclusively to the patronage of its members. This also is fallacious, for it rests on a peculiar mental blind spot.

Those who make it are so lost in contemplation of the virtues of their own movement that they are unable to see the grand outlines of the great society of which they are so small a part. All of us live in mutual interdependence. Each of us specializes in his own small line, and then exchanges products through the market with others who are doing likewise. Where would consumers' coöperatives be if they were cut off from supplies of goods produced outside the movement, without the benefit of railway, telegraph, and telephone service, without the services of professional men far divorced from the coöperative movement? "Coöperation" in this narrow and specialized sense is largely based on ignorance of how the world runs.

Certain of the more ardent proponents of coöperatives envisage the day when they will be dominant and perhaps the only surviving type of business. In Canada, the wheat pools already have some 40 per cent of the total trade in grain and now have resources which would permit them to increase

that figure immediately by the purchase of their competitors, or more slowly forcing them to the wall. Certain of the dairy coöperatives in Canada's western provinces have perfected almost monopoly control of the territories which they have marked out. But, as Canadians now realize, long before that point is reached, the tax system will have to be revised, or the state would be destroyed through lack of revenue.

EVEN if it be denied that coöperatives make a profit, or gain; even if it be accepted that patronage dividends are a return of an overcharge (neither of which can be supported logically), it would still be necessary to levy taxes upon them if they became the major form through which business were carried on. No matter what attempts are made to maintain their present tax-free position, it necessarily will be destroyed, in the end, by the very growth which such unparalleled immunity from taxation makes possible.

All taxes on business firms are, in the long run, costs of doing business, regardless of the particular method of assessment. Therefore, to permit coöperatives to escape from costs so heavy as the income taxes are now is a gross discrimination against all other businesses which pay taxes. It tends to destroy the tax base, and leads to the uneconomic employment of the nation's resources, a serious objection from an economic standpoint.

Even more important, the effect of such discrimination is cumulative.

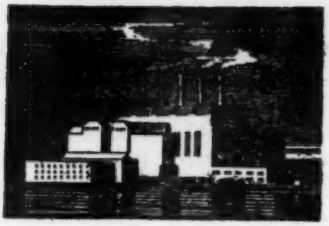
Not all coöperative leaders maintain that co-ops should be exempt from taxation, and many of them through the years have seen the fallacies of the arguments made by their compatriots. Historically, co-op intellectual leaders have maintained that coöperatives must prove themselves without special privilege from the government, or from any other direction. Economists generally agree that exemption from taxation is not necessary to the coöperative movement, because, given good management, there is no reason why a coöperative should not be as profitable as any other commercial venture.

THE issue, as it affects the American taxpayer, is very simple. If one business group is to go untaxed while another group is taxed, the former group sooner or later will take over the latter group—it is just a question of time. Private enterprise in this country will be destroyed if action is not taken soon to curb the growth of co-ops.

I believe that the finest thing I, or any other Congressman, can do for the American business system today is to see that coöperatives pay taxes on their incomes before distribution of earnings, in the same manner and at the same rates as all other businesses. If we do not see to this, we will be derelict in our duty to the people and to the government itself.

¶ "IN *the early New Deal days there was about Washington a number of earnest people proposing a number of novel schemes. These people were sure of two things; their own wisdom and their own high-minded unselfishness. One who tried to point flaws in their plans was first treated patronizingly. But if he persisted he was denounced.*"

—EDITORIAL STATEMENT,
The Wall Street Journal.



Financing by Lease

How a public utility can acquire that new office building or garage, the easy, rather than the hard, way.

By FERGUS J. McDIARMID*

WHY are public utilities not taking greater advantage of a new type of financing operation which is available to them to meet their real estate requirements? They can do this by a method whose advantages have been recognized by such leading mercantile firms as Sears Roebuck, Montgomery Ward, Woolworth, and many others. Recently also manufacturing concerns, even up to the stature of Westinghouse Electric, have begun to use it. It is a method by which such firms, of strong credit, can avoid tying up their own capital in real estate, and when such capital is already tied up they may free it for more profitable use elsewhere.

I refer to the ownership of such real estate by institutional investors, mainly life insurance companies, and the leasing of it to firms of established credit standing. Anyone following the financial pages during the last year or so has probably noted the sale by such companies as Sears and Ward of a large number of their store properties to life insurance companies. The seller then turns around and leases the property back from the purchaser for a long period of years at a net rental sufficient to enable the insurance company to amortize cost and to receive a modest return on the declining balance of its investment. Usually arrangement is made for an extension of the lease at the option of the lessee at a rather nominal rental. Quite often a new building will be financed on this basis.

One advantage of this plan to a mercantile or a manufacturing company is that it releases funds for working capital or other purposes where presumably a higher rate of return can be obtained than if tied up in real estate. The entire amount of the rental, both interest and amortization, has been firmly established by leading tax lawyers as an operating charge before income taxes. The plan also provides flexibility in that if the user of the building desires to occupy it after the original lease period he can do so for a rather nominal rental. If the occupier desires to move, he is free to do so.

*Vice president, Lincoln National Life & Insurance Company, Fort Wayne, Indiana.

Many of the firms using this plan are of the highest credit standing and could raise capital on a relatively favorable basis by the traditional methods including the sale of bonds, preferred or common stock. That they choose the real estate lease plan as an alternative forms the strongest practical endorsement of this plan.

To the life insurance company the plan has its points. It provides a rate of return, secured by strong credits, usually somewhat higher than that obtainable from high-grade, long-term bonds. It embodies amortization of the investment, a factor often lacking in such long-term bonds. Romance is introduced to the deal by the rental collected after the original lease period and after the investment has been entirely written off the books. Also the insurance company profits by the residual value of the building when the tenant finally chooses to move out. This, however, usually will be many years in the future, so that those who set up these deals will not be around to take credit for their sagacity.

Plan Applies to Utilities

THE writer can see no good reason why this plan could not be used to great advantage by many public utilities at this time as a means of financing office buildings, service buildings, and garages, or other needed real estate. In cases where these are already owned by a utility it could be used to raise capital needed elsewhere in the business by selling the real estate to a financial institution and leasing it back; keeping just as full control over its use as before.

Most utilities today are faced with very large financial requirements for new construction. It is not uncommon to encounter cases where the amount to be spent on property addition over the next five years is equivalent to over half the present plant account of the company. They need this money for generating equipment, new transmission lines, greater capacity in existing transmissions and distributions systems, and other operating equipment, all at new high prices. Telephone companies need automatic equipment to try and beat the labor problem. This equipment is needed to meet the basic demands of customers' service.

It is not much wonder under these conditions that requirements for new office quarters or new service buildings may be asked to play a Cinderella rôle. The old store building which was quite the thing back in the 1880's may be asked to continue to serve as a branch office in an up and coming town amid the resplendent Grant, Kresge, and Ward edifices, the titles to which are as likely as not held by life insurance companies. The old service building may be asked to make do in spite of its obvious inefficiencies and expensiveness to operate in this time of high labor costs.

The branch office building where the public pays its bills, and probably with a showroom adjoining, is the part of a utility property that the public sees. Transmission lines going across the countryside are strangely impersonal things and they have no one's name on them. Many power plants are in out-of-the-way places and ordinarily have little contact with the consumer. The office is where the people go. The office and adjoining showrooms are the face of a utility that the public sees, and an attractive, clean, and pleasant

face is always desirable. Under the plan described in this article, utilities can have this kind of face, built according to their own desires and specifications, and without diverting capital from the operating end of their business.

Terms of the Lease

AN electric company, let us say, desires a new building to house its main office. It sees fit to have a life insurance company finance the building and lease it to the utility. During the construction period the matter can be handled in at least three possible ways: The utility itself may finance the building during completion, selling it to the insurance company thereafter at total cost including land and all overheads. This method would probably appeal strongest to the insurance company as it reduces the cost and trouble of handling to a minimum. However, it may prove objectionable to the utility as property built under these conditions may tend to pass under that company's general mortgage. A second method is to have a local bank, which is close to the job, provide a construction loan. The third, of course, is that the insurance company advance funds directly as required. A provision of the latter method would be that the utility certify these advances as they are made as being a legitimate part of the final cost.

THE really essential part of the whole transaction is the long-term lease under which the utility occupies the property. This lease will have to be for a long enough period to permit complete amortization of the investment within the original lease period. In the case of office buildings in good business locations, an original lease period of twenty-five years, or even longer, will be feasible. In the case of service buildings and garages, which are usually special purpose properties in off locations, an original lease period of somewhat less than twenty-five years may be desirable from the point of view of both lessee and lessor. However, even in the case of these an original lease period of twenty-five years is not ruled out.

Now for the amount of lease rental. An annual rate of 6 per cent on the total original investment over a 25-year period will just about amortize the investment completely over that period and give the insurance company a return of 3½ per cent on its reducing book investment, the lessee paying taxes, maintenance, and all other expenses of operation. Provision can be made for extending the lease period beyond the original term at the option of the lessee at a greatly reduced rental, a rate of 2 per cent on the original amount of the investment being rather typical. This extension may be for one or two 10-year periods with the

¶ "MANY *of the firms using this* [*lease*] *plan are of the highest credit standing and could raise capital on a relatively favorable basis by the traditional methods including the sale of bonds, preferred or common stock. That they choose the real estate lease plan as an alternative forms the strongest practical endorsement of this plan.*"

lessee usually having the option to cancel on one year's notice. Terms approximating these should be available to a public utility of first-class credit standing.

A Comparison of Financing Costs

How do these terms compare with alternative methods of providing the same facilities? Most utilities can, of course, raise funds by sale of first mortgage bonds with a cost to the borrower well under 3½ per cent, and even under 3 per cent. Even when one offsets that part of the lease rental which takes care of amortization against the depreciation charge which would exist if the property were owned directly, the cost of financing through mortgage bonds would be lower, at least measured over the period of the original lease.

But a utility cannot finance entirely through the issuance of debt securities. It is generally recognized that it should balance its debt financing about equally with equity financing—the sale of preferred and common stocks. During the past year or so the market has been very receptive to preferred stock issues. Many utilities have been able to sell preferred stocks to yield as little as 3¾ per cent, and some to yield considerably less.

There is a strong reason to believe that this condition is passing if it has not already done so. Recently the preferred stock of Toledo Edison, a very good credit, was offered to the public on a 4.1 per cent yield basis and it was a slow-selling deal. A year ago the same issue would probably have sold readily on a 3¾ per cent basis.

What are the reasons for this change? The general behavior of the stock market is one factor. Good common stocks including those of public utilities can now be bought to yield much more than a year ago. Also many financial institutions, mainly life insurance companies, which have been heavy buyers of preferreds in the last couple of years are about up to their limit, in view of the fact that they must carry these in their balance sheets at market value. They do not wish to be subject to the large fluctuation in their surplus which too large holdings of such securities would entail.

It is the writer's opinion that it may not be too easy for public service companies to raise the large amounts of capital which they are going to require over the next five years, and still maintain a balance in their capital structures, without running into some fairly high-cost equity financing. Even the rate on bond financing seems to be turning upward. Witness the sluggish behavior of the last AT&T debenture offering. If, therefore, such companies can avoid even a fraction of such financing by making intelligent use of the real estate lease plan described herein, they will probably profit by doing so.

A little analysis will show that the net cost of servicing the lease outlined above compares very favorably with the cost of preferred stock financing. The 6 per cent net rental during the initial period of the lease is in total a charge before income taxes, a fact which has been fully established to the satisfaction of the tax lawyers of a great many leading corporations. Assuming the present 38 per cent income tax rate, this is equivalent to a charge of only 3.72 per cent after such income taxes. This is a considerably

Offices and Showrooms

"MANY power plants are in out-of-the-way places and ordinarily have little contact with the consumer. The office is where the people go. The office and adjoining showrooms are the face of a utility that the public sees, and an attractive, clean, and pleasant face is always desirable. Under the [lease] plan . . . utilities can have this kind of face, built according to their own desires and specifications, and without diverting capital from the operating end of their business."

lower rate than that on which the average utility can raise preferred stock money today. And, of course, the lease arrangement has the additional advantage of freedom from depreciation charges and the dropping of the rental charge to a rather nominal level after twenty-five years.

As compared with current common stock financing the advantages of the lease plan are still more apparent. Many public utility common stocks, and good ones too, currently are selling at less than ten times current earnings and on a basis where the current dividend pays the purchaser a return of over 6 per cent.

Without going into the matter any further, it is apparent that, in relation to the over-all cost of utility financing today, with a proper proportion of bonds, preferred, and common stock, the cost of the above lease arrangement during the original period of the lease is lower. The lease plan appears still more favorable when the drop in rental after twenty-five years is taken into account, together with the advantage of flexibility in the position of the utility.

Some Questions

WHY does a life insurance company, which would buy the bonds of a utility on a 2¾ per cent to 3 per cent interest basis, ask a 3½ per cent rate of return on its investment under a lease arrangement to the same utility? Is not the same basic credit behind both investments? The reasons for this differential are several fold. In the first place such investing institutions have been able right along to get a 3½ per cent return on such deals with some of the strongest credits in the country.

The terms apparently compare favorably with those available from private and other lessors.

Furthermore, life insurance companies can invest only a small part of their funds in this sort of thing. The state of Indiana, which pioneered in permitting its life insurance companies to invest in real estate to be leased to corporations of satisfactory credit standing, draws the line at 5 per cent of assets, up from 3 per cent originally set. With a quite restricted limit for over-all investments of this type, life insurance companies feel they can afford to select the more desirable deals. There seems to be little tendency to break the 3½ per cent net rate of return, even on the strongest credits, and on more speculative credits the rate runs considerably higher.

And another thing, a lease obligation is not as strong as a general obligation. In event of reorganization, a lessor's total legal claim against the lessee is likely to be one to three year's rental and then only a general creditor. In event the property occupied has great strategic value he may be able to do better. In most cases, however, his position is likely to be greatly inferior to that of a holder of a general mortgage bond. Hence a materially higher rate of return is justified.

Does the charging of a low rental after the period in which the investment is totally amortized indicate avariciousness on the part of the investing institution? Definitely not. It is this factor that provides the main romance in the deal for that institution. Prior to the passage of laws making such real estate investment possible, such institutions had been lending on mortgages about the full cost of the property to be leased to strong parties. In this event the institution put up nearly all the money, but a middleman got the profit. This was an annoying situation. And it is not on record that such middlemen gave the generous renewal options available when the financial institutions, intent on mainly a modest but safe return, lease the property directly to the user.

Conclusion

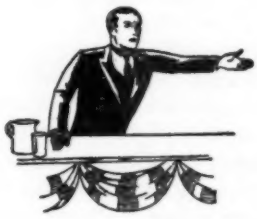
A LIFE insurance company is a good landlord. In the event additions or improvements are desired to the leased property, it has plenty of funds available to finance these, expecting thereon probably the same modest rate of return as on the original investment. Also, if a utility acquires the use of one piece of property in this way, it establishes a relationship which should make the handling of similar transactions with the same life insurance company quite a routine matter.

Periodically the writer runs into instances where utilities lease property on a long-term basis from individuals. Such instances, recently come to notice, include a head office building for a substantial public utility and a number of garages to be leased to one of very highest credit standing. In such instances the individual holding title to the property quite often turns around and raises practically the entire cost of the building by a mortgage placed with a financial institution. The mortgage is obtained very largely on the strength of the lease. Such mortgages may carry an interest rate of 4 per cent and be entirely serviced from the lease rental, usually with enough left over to give the owner a current profit besides. Usually, under such conditions, the

utility does not obtain anything like the generous renewal provisions outlined above.

It is quite obvious, therefore, that public utilities and other strong companies would do very much better and save themselves a lot of money if they took advantage of the lease plan described in this article.

The services of no broker would be required to arrange such deals and the doors of financial institutions are open. The latter might even supply a free lunch.



Responsibility for Freedom

"THE dangers are vast but our opportunity is great. Tremendous areas of the world are in chaos, the after effects of civilization's greatest war. Decadence and destruction have been let loose to create the atmosphere in which totalitarianism flourishes. Aggressive and expanding forces are seeking to exploit the peoples thus exposed.

"Here then is the challenge and the inspiration for One America. Here, in the western world, is the largest established union of free peoples. Here is history's outstanding example of how peoples of many countries can dwell together not merely in harmony but in union. Here in the world's largest area undamaged by war there is a great stockpile of creative energy. Through our idealism, our industrial techniques, and our efficient transport and communication systems, we can give impetus and leadership to the reconstruction of the rest of the world. Here there need be no vacuums into which unfriendly forces or philosophies can penetrate.

"Our democratic ideals, generated, expanded, and strengthened in the Americas, can be felt the world over. And in carrying democracy to the rest of the world, we must be active; we must be aggressive. We must not be mere spectators. We must take the lead in world affairs. As Secretary [of State] Marshall said: 'Spectators of life are not those who will retain their liberties, nor are they likely to contribute to their country's security.'"

—JUAN T. TRIPPE,
President, Pan American Airways.

The Story of Clark Hill

A summary of hydroelectric development and planning on the Clark Hill project on the Savannah river, 20 miles above Augusta, Georgia.

By CHARLES A. COLLIER*

THIS is a story which so far has no ending. It is the story of Clark Hill dam, a hydroelectric site on the Savannah river, 20 miles north of Augusta, Georgia. For more than twenty years now, the site has been considered as an excellent one for the construction of a power dam. Plans have been laid and approved, and considerable money has been spent in preliminary development of the Clark Hill project. The money has been spent, at various times, by the Savannah River Electric Company, a privately owned, taxpaying utility corporation and also by the Federal government, and therein lies the story. The Savannah River Electric Company wants to build Clark Hill dam, with its own funds, at no expense to the United States. The government, through the Army Engineers, wants to build that dam with taxpayers' money appropriated for *flood control* out of the Federal Treasury. Final decision on who will build it lies in the hands of Congress.

The Savannah River Electric Company was organized in 1927 by interests affiliated with the Georgia Power Company and the South Carolina Power Company, for the specific purpose of developing the hydroelectric site on the Savannah river known as "Clark Hill." As planned the dam would have an initial installation of 160,000 kilowatts, and would be capable of producing approximately 50,000,000 kilowatt hours of primary energy and 177,000,000 kilowatt hours of secondary power per year. Its original cost was estimated at $20,000,000. The company was granted a license by the Federal Power Commission for this development in 1928, and immediately undertook preliminary work and expended funds in excess of $1,400,000 for engineering surveys, diamond drill borings, land acquisition, etc. The com-

*For personal note, see "Pages with the Editors."

pany acquired and now owns approximately 39,500 acres of land in and around the reservoir area, which acreage includes the site upon which the proposed Clark Hill dam is to be located.

THE depression of the early 1930's imposed great difficulty in raising the necessary funds and also caused a material reduction in the demand for power in the area in which the electricity produced at the Clark Hill dam would have been marketed. As a result of these two and other deterrent factors the company, by mutual consent with the Federal Power Commission, temporarily discontinued work on the project and surrendered its license in 1932.

So long as the company could not then go forward with the project, it did not stand in the way of the government doing so. In 1935, the Savannah River Electric Company joined with citizens in the Augusta area, at their request, in an effort to interest the Federal government in the development of this project. As a result of this coöperative work, the government undertook certain surveys and studies on the Savannah river and reported favorably upon the development of the site on the basis that a power development was sufficiently meritorious to warrant the construction of the project. Incidental benefits to flood control and navigation were ascribed to the development. This report estimated the cost at $21,244,000. A later report, Senate Document No. 66, 76th Congress, dated January 24, 1939, estimated the cost of the project at $27,548,000.

A further report, dated May 27, 1944, by the Army Engineers (House Document No. 657, 78th Congress), estimated the cost of the project, somewhat modified from the original, at $35,300,000. The report stated that the proper operation of the reservoir to be created by the project would reduce flood damage by the net sum of only $16,750 per annum. It would result in navigation benefits of $201,000, which would be offset in part by a potential power loss of $147,000, leaving a net gain of only $54,000 per annum. These two savings capitalized at 4.6 per cent would amount to $1,538,000. It was recommended that this amount be allocated to flood-control and navigation benefits as part of the first cost of Clark Hill development, then estimated at a total figure of $35,300,000.

THE company took an active part in the efforts to secure congressional authorization for the project. Throughout the nine years in which it was discussed, two salient facts were established: First, Clark Hill is primarily a power project. The Army Engineers determined that the power benefits from the project constitute 92 per cent of the total benefits. In the Army Engineers' Report, House Document 657, 78th Congress, which forms the basis for the construction of the project, these words appear:

> . . . that Clark Hill reservoir, if suitably constructed and operated primarily for hydroelectric power development, would incidentally reduce downstream flood damages and improve low-water flows for navigation.

Second, it was agreed by all sponsors that the Savannah River Electric Company would have the right to purchase all power to be developed at Clark Hill. This agreement paralleled one already existing for the disposal of power at Hoover dam on the Colorado river. Be-

fore Hoover dam was built, the city of Los Angeles and the Southern California Edison Company had made a contract with the Interior Department to purchase all power to be generated at the dam. It was generally conceded that such preconstruction arrangements represented the accepted government policy in marketing power from Federal dams.

The Honorable Henry L. Stimson, then Secretary of War, in a letter dated June 6, 1944, transmitting the favorable report on Clark Hill to the Speaker of the House of Representatives, stated:

> . . . since the project is not essential to the war, the department is of the opinion that, if the project is approved, initiation of construction thereof should be deferred until after the war.

In the same letter he reported the Bureau of the Budget as advising that construction of the project would not be in accord with the program of the President.

DURING the same period the War Production Board on several occasions refused priorities for materials for similar projects, for which machinery had been ordered some time before the approval of Clark Hill. However, the Administration did not oppose the authorization of the project by Congress, so long as immediate construction was not contemplated. The Clark Hill development was authorized by the Congress, along with a large number of other projects, in the 1944 Flood Control Act, Public Law 534, 78th Congress, approved December 22, 1944.

But by a coincidence there was also passed in that same bill a provision which made it unlikely that the Savannah River Electric Company would ever be the purchaser of Clark Hill power. Section 5 of the 1944 Flood Control Act transferred the power-marketing function at all Engineer dams from the War Department to the Interior Department, and it also required that priority in power sales be given to municipalities, coöperatives, and other public bodies. As administered by the Interior Department, it seems certain that Clark Hill power would go to these "public bodies" first, no doubt leading to a demand for Federal construction of transmission lines to serve them. Thus the Federal government would enter into competition with private companies already serving the area, probably offering power at subsidized rates below those of taxpaying utilities. The very same act of Congress which brought the Clark Hill dam to life, deprived the Savannah River Electric Company of its right to share in that life. The company agreed to support Federal construction of the dam, with the understanding that it was to be allowed to buy the power. The

¶ "As *administered by the Interior Department, it seems certain that Clark Hill power would go to . . . 'public bodies' first, no doubt leading to a demand for Federal construction of transmission lines to serve them. Thus the Federal government would enter into competition with private companies already serving the area, probably offering power at subsidized rates below those of taxpaying utilities.*"

78th Congress, in approving § 5 of the 1944 Flood Control Act, upset that understanding. At that time, the cost of Clark Hill was estimated by the Corps of Engineers at $35,300,000. This estimate was increased by the Army Engineers to approximately $45,000,000 in July, 1946. Estimates based on bids received early this year indicate a cost of more than $50,000,000.

As soon as it became evident that an immediate postwar recession in business was not likely to be experienced, and the necessary moneys and materials could again be obtained, the Savannah River Electric Company undertook to resume plans for its own construction of the project. The company had assurances of its ability to finance the project at low interest rates, and the power market in the service areas of its affiliated companies (the Georgia Power Company, Alabama Power Company, South Carolina Power Company, Mississippi Power Company, and Gulf Power Company) was such as to assure absorption and widespread distribution of the entire usable power production of the plant. Therefore, application for a license was prepared and filed with the Federal Power Commission under date of August 28, 1946, asking that the Savannah River Electric Company be granted a permit to proceed with the development. At that time, the government had not commenced construction of the dam; the only construction work in progress was on a contract let July 23, 1946, for grading a railroad right of way. Work on this contract was actually begun July 29, 1946.

In its application for a license, the company agreed to construct the development in substantial accordance with the plans of the Army Engineers, so that the flood-control and navigation benefits to be realized from the project would be identical with those that would be realized if the development were constructed by the Army Engineers. Due to the fact that the energy produced at the plant could be absorbed into the interconnected system of utility companies in the area, the Savannah River Electric Company would be in position to make more complete utilization of the power resources of the plant than would be possible under Federal ownership and operation; and such power would be made available to coöperatives, municipalities, residential, and industrial consumers over a much wider area without the expense of constructing new transmission and distribution facilities. Also, the rates would be subject to regulation and approval of state utility commissions.

The Federal Power Commission held hearings in Atlanta in October, 1946, on the company's application, and later dismissed the application on the grounds that the project had been authorized by Congress, and work had been started by the Army Engineers. This decision was reached despite the fact that at the hearing sixty-four witnesses residing in the territory in which the project will be located, from all walks of life, expressed themselves as preferring to have the Savannah River Electric Company, rather than the Federal government, construct the project. Only seven persons testified to the contrary.

In fiscal year 1947, which ended on June 30th of this year, the chief of

Advantages of Private Development

"DEVELOPMENT of the Clark Hill project by the Savannah River Electric Company will contribute to the upbuilding of the area through the payment of large amounts of taxes. The company estimates the total of Federal, state, and local taxes which it would pay on the project at about $900,000 per year. This consideration is of great importance to the citizens of the locality . . ."

the Corps of Engineers allocated $5,500,000 out of a blanket appropriation for flood control to provide funds for commencement of work on the project.

Since the Federal Power Commission hearing, the Army Engineers have proceeded in haste to begin construction on the Clark Hill development and have awarded several contracts aggregating approximately $3,000,000 (as of April 17, 1947). The contracts already awarded cover engineering design, the spur track railroad, the east and west embankments, diversion channel, subsurface explorations, the first stage of the cofferdam, and the slide gates and conduit lining. Little work other than the construction of the spur track railroad, and some excavation on the abutments, has been done at this writing in midsummer.

IN December, 1946, the Army Engineers, by order of the Federal courts in South Carolina and Georgia, took a "use and possession" order for approximately 2,700 acres of the company's land. This acreage included the dam site, and the land is now being occupied by the contractors. Possession of this land was taken without any payment or other definite provision for compensating the Savannah River Electric Company for the lands in question, or for the other lands of the company to be taken or to be rendered worthless for the purposes for which they were acquired. The company's lands are believed to have a value for hydroelectric purposes in excess of $2,000,000.

If the Savannah River Electric Company is permitted to construct and

operate the project, the power produced at Clark Hill will be sold at cost (including cost of money) to the affiliated companies of the integrated system of which the Savannah River Electric Company is a part. The company is in position to proceed promptly with the construction and, as stated in the application for a permit, to complete the project in from three to three and one-half years from date of the granting of the license. The southeastern integrated system would provide for the widest possible distribution of the power, not only in Georgia and South Carolina, but in Alabama, Mississippi, and Florida as well. No such widespread distribution could be obtained if the project were constructed and operated by the government as an isolated unit.

THE development of this project by the Savannah River Electric Company will insure every benefit that a federally constructed and operated project would insure, with no burden whatsoever upon the public treasury and no loss whatsoever to the Federal government; the Savannah River Company has offered to reimburse the government for all out-of-pocket expenditures made on the project to date.

Development of the Clark Hill project by the Savannah River Electric Company will contribute to the upbuilding of the area through the payment of large amounts of taxes. The company estimates the total of Federal, state, and local taxes which it would pay on the project at about $900,000 per year. This consideration is of great importance to the citizens of the locality who are vitally concerned about their tax revenues and their ability to provide funds for schools, police, fire protection, and other public services.

The Savannah River Electric Company is an affiliate of the Georgia Power Company, Alabama Power Company, South Carolina Power Company, Mississippi Power Company, and Gulf Power Company. These companies have been engaged for many years in supplying electric service throughout most of Georgia and Alabama, large portions of South Carolina and Mississippi, and a part of Florida. They have been efficiently operated. They have adequately covered the territory with their transmission and distribution lines, and their rates for electric service are among the lowest rates in the country, as is evidenced by the high use per customer enjoyed by these companies.

FOLLOWING is a tabulation showing the average annual kilowatt-hour use per customer, and average rates for residential service in the Augusta area of the Georgia Power Company, the South Carolina Power Company, and the United States as a whole:

	Av. Annual Kw. Hr. per Cust.	*Av. Rate for Residential Service (Yr. End. Mar. 1947)*
Georgia Power Co. (Augusta area)	2,224	2.01¢
S. C. Power Co. ...	2,233	2.61
U. S. average	1,358	3.17

There is no complaint as to the level of the rates of these companies, the adequacy of their service, or the treatment of their customers. On the contrary, these companies generally enjoy the good will of the entire public they serve, and are looked upon as among the most constructive influences in the development of their service areas. There is no need for the development

of the project by the government, either from the point of view of rates or adequacy of service.

There is nothing unreasonable in the request of the Savannah River Electric Company that it be allowed to develop its own properties at its own expense, and own risk, instead of being deprived of its property for the purpose of Federal development, which offers no advantages to flood control or navigation or the production of power that would not be equaled by the Savannah River Electric Company.

So the company must take the only course open to it—an appeal to Congress itself. Two bills have been introduced in the 80th Congress substantially supporting the company's position. One of them, HR 3826, introduced by Representative Dondero (Republican, Michigan), would permit the company to install the powerhouse and generating facilities in the federally constructed dam. The other, sponsored by Representative Wilson (Republican, Indiana) would "deauthorize" the project, thus permitting private development of the whole Clark Hill project. Action on one of these two measures is expected at the next session.

THAT is the story of Clark Hill dam at this writing. Congress has appropriated $5,000,000, for Clark Hill work during fiscal year 1948. This amount still may not be sufficient for the Army Engineers to begin actual construction work on the dam itself. There is still time for the Congress of the United States to declare firmly just what the policy of the Federal government shall be in competing with its own citizens in the electric power business. There is still time to return Clark Hill dam to its original sponsors, thus saving the American taxpayers at least $50,000,000, and benefiting more people in the Southeast than a Federal power dam could hope to do.

"ALTHOUGH most people think of the fluorescent light as a fairly recent development, the fire phosphors (the light-bearing materials which make up the fluorescent compound) first were prepared in 1610 by Cascarilo, an Italian alchemist. He announced that he had captured the light of the sun with this new material.

"An ordinary lamp is only 10 per cent light and 90 per cent heat and lost energy. The fluorescent lamp provides practically 100 per cent light since it radiates very little heat, thus preserving light energy. Also, it has less flicker, which means less eyestrain.

"Ultraviolet phosphors (luminescent materials made to glow under rays such as from fluorescent lamps) were mixed with the dye used in ration coupons during the war. Fake coupons could be detected simply by exposing them to fluorescent rays.

"Scientists are considering the possibility of a material which will absorb the ultraviolet rays of the sun during the day and reradiate the rays at night to light highways."

—EXCERPT *from The (Louisville) Courier-Journal.*

Laws Passed by the 80th Congress, First Session

A digest of enactments and other legislative developments in the recent congressional session of special interest to public utilities.

By FRANCIS X. WELCH*

THE first session of the 80th Congress recently concluded is being variously hailed as a Do-Nothing Congress and a Do-Less-Than-Nothing Congress, on the one hand; and on the other hand it has been praised as a courageous and intelligent Congress which made surprising progress in carrying out the mandate of the people against serious obstacles.

Actually, the truth probably lies somewhere between the praise for heroism and the criticism for failure in some degree. Almost any observer would agree that the work of the 80th Congress must be appraised against the background of its political composition with relation to the White House. Another preliminary handicap, widely noted in discussions of the work of the 80th Congress, was the initial delay caused by the reorganization of the entire congressional setup under the LaFollette-Monroney Act. Again, the deterrent effect of the presidential veto hung like the sword of Damocles over virtually every measure which Congress considered. So, we can see plenty of justification for the failure of the 80th Congress to put as many laws, quantitatively, on the statute books as some of the previous sessions of Congress.

Bills of special interest to the public utility industry which were considered by the 80th Congress can be classified into five general divisions: (1) Bills affecting labor relations; (2) bills affecting public works projects—including public power features; (3)

*Managing editor, PUBLIC UTILITIES FORTNIGHTLY, Washington, D. C.

bills affecting regulation; (4) appropriation bills; (5) tax bills.

COUNTING all of the bills which were merely introduced (including duplicates by different Congressmen and "companion" bills in different chambers), it would be safe to say that well over 200 such bills were filed in the 80th Congress. Of these, 6 passed both houses of Congress and were enacted. (This includes the Taft-Hartley Labor Act, which was enacted over a veto.) Four passed one branch of Congress. Two got no farther than a favorable committee report, while six did not get beyond the hearing stage. In other words, only 18 out of more than 200 bills (of special interest to the public utilities), or about 1 out of 12, even managed to attract sufficient attention to go into committee hearing stage. This means that 11 out of 12 continued inactive from the date of their introduction.

THIS is not a particularly bad showing, as compared with the work of previous congressional sessions. Quantitatively, it was a little less than average. And that, in turn, is more than offset by the difference in political organizations between Congress and the administration. Such a difference always has the effect of discouraging volume progress on bills which Congressmen know are merely headed for a presidential veto, if they do pass. Under certain circumstances, Congressmen usually like to devote their time to bills which have at least a chance of surviving.

Laws Actually Passed

NOW, getting down to cases on bills which actually cleared all the hurdles and landed on the statute books.

Two of these were labor laws. The Taft-Hartley Act (HR 3020) was one of these and without a doubt the most controversial bill in the entire session. The special application of the Taft-Hartley Act to public utility operations is seen in the feature authorizing a temporary injunction to prevent strikes or threats of strikes endangering the national health and safety. Other features of the Taft-Hartley Act of special interest to public utilities were analyzed in detail in a recent issue of this publication.[1] The other new labor reform act is the so-called Gwynne Bill (HR 2157). In its original form the Gwynne Bill barely missed enactment in the 79th Congress where it was urged strongly on behalf of the independent telephone companies and other small company employers, to ban stale claims arising from back violations of the Fair Labor Standards Act (Wage-Hour law). The Gwynne Act, as finally passed in the 80th Congress, not only imposed a statute of limitation of two years on all such back claims for damages against employers, but it also outlaws the controversial portal-to-portal pay claims, except under circumstances where such payment is customary, or where employers cannot show good faith.

Only one *new* public works project law was enacted and that was of a rather minor nature. This was the Anderson Bill (HJRes 140) which renames Boulder dam so that it is once more officially called Hoover dam.

On the regulatory front, only three

[1]See "Utility Antistrike Laws" by Roscoe Ames, issue of July 31, 1947, page 163.

St. Lawrence Project

"EVEN though it failed to gain final approval in the first session, the St. Lawrence seaway project was a paradox of the 80th Congress. . . . when the Republicans organized the Congress for the first time in fourteen years, the St. Lawrence Seaway Project Bill emerged with a favorable vote (9 to 5) from the Senate Foreign Relations Committee. This committee will file a favorable report on the bill in the Senate next January, placing it on the Senate calendar for early action."

bills—likewise of a minor nature—became law: (1) the Allen Bill (HR 1602) setting up a Bureau of Mineral Resources in the Interior Department, (2) the White-McFarland Act (S 816) requiring the United States to pay full rate for telegraph service, and (3) the Schwabe Bill (HR 2956) which grants natural gas pipe-line rights of eminent domain and became public law No. 245.

In the field of taxation, one law was passed, the Grant Act (HR 1030) extending wartime excise taxes indefinitely. These would have expired six months after cessation of hostilities. But, as a result of this law, the special wartime excise levies on telephone and telegraph service, passenger fares, and electric light bulbs, will continue until Congress takes further action.

Appropriation Laws

ALL major appropriation bills for the fiscal year of 1948 became law, naturally. But, there was a good deal of pulling and hauling on special features of certain Federal agency appropriations which were of concern to one or more of the public utility industries. Here is a summary of such laws:

HR 2700—*Labor-Federal Security.* Allows Labor Department $75,850,901 of requested $103,578,700.

HR 3123—*Interior Department.* Allows $194,586,859 of requested $296,135,420. Reclamation Bureau gets $89,528,038 (requested $145,952,200); Bonneville Power Administration, $8,596,400 (requested $20,278,000); Southwestern Power Administration, $125,000 for administrative purposes only (requested $3,925,000); Power Division, $50,000 (requested $124,-

000); Oil and Gas Division, $275,000 (requested $450,000).

HR 3601—*Agriculture Department.* Rural Electrification Administration allowed $225,000,000 lending funds (requested $250,000,000); REA administrative expenses, $5,000,000 (requested $5,600,000).

HR 3756 — *Government Corporations.* Allows Tennessee Valley Authority $18,700,000 (requested $47,000,000); requires TVA to repay power investment of $348,239,240 to Treasury within 40 years.

HR 3993—*Independent Offices.* Allows Federal Communications Commission $6,200,000; Federal Power Commission $3,590,000; Interstate Commerce Commission $9,000,000; Securities and Exchange Commission $5,688,700 (plus moving funds to return to Washington, D. C.); Atomic Energy Commission $175,000,000 (promised more in next session).

HR 4002 — *War Department Civil Functions.* Allows Army Engineers for flood-control projects (including power) $231,800,825.

Bills That Failed

IN the field of labor legislation, two bills failed to get beyond committee hearing stage which, if enacted, might well have had considerable impact upon public utility operations. One of these was the bill, introduced in both the Senate and the House, to increase minimum wage standards of the Fair Labor Standards Act, known in the House as the Landis Bill (HR 3886) and in the Senate as the Baldwin Bill (S 1509). This legislation is believed likely to move early in the next session of Congress. Both would provide an eventual 75 cents an hour minimum wages. The other labor bill, which failed, was the Ives Bill (S 984) to revise the old Fair Employment Practices Committee so as to prevent discrimination in hiring because of race, creed, or color.

The three public power project bills which received the most attention in the 80th Congress were the Rockwell Bill (HR 2873), the Dondero Bill (HR 3036), and the St. Lawrence seaway power project (SJRes 111). The Rockwell Bill, which was reported to the House, would reduce power interest payments from 3 per cent to 2½ per cent on Reclamation Bureau projects, extending the payment periods to seventy-eight years. It would also require four-fifths of power interest payment to go into the Treasury. The Dondero Bill, on which hearings were held, but no committee report completed, would shift power marketing at flood-control dams from the Interior to the Army Engineers, and it would also give certain regulatory control to the Federal Power Commission.

Even though it failed to gain final approval in the first session, the St. Lawrence seaway project was a paradox of the 80th Congress. Here was the sole major New Deal power project which flopped all during the years its chief proponent, President Roosevelt, was in office. Yet, when the Republicans organized the Congress for the first time in fourteen years, the St. Lawrence Seaway Project Bill emerged with a favorable vote (9 to 5) from the Senate Foreign Relations Committee. This committee will file a favorable report on the bill in the Senate next January, placing it on the Senate calendar for early action.

Two regulatory bills managed to pass one branch of Congress. The Rizley Bill (HR 4051) amending the Natural Gas Act to curb FPC control over the production-gathering of nat-

ural gas was passed by the House of Representatives. It was tabled by the Senate Interstate and Foreign Commerce Committee. Whether it can be revised in this committee clearly, is a question.

The Bulwinkle-Reed Bill (S 110) would amend the Interstate Commerce Act so as to exclude railway freight rates, supervised by the Interstate Commerce Commission from prosecutions by the Antitrust Division of the Justice Department. It was passed by the Senate and reported to the House. Observations indicate that it will pass the House but faces strong possibilities of a presidential veto.

Two other regulatory bills by the same author (Representative Miller, Republican, Connecticut) were given a lot of discussion during the 80th Congress but they did not get beyond the hearing stage in the House Interstate and Foreign Commerce subcommittee for the FPC. One of these, HR 2972, would amend the Federal Power Act so as to limit FPC jurisdiction of hydro plants to streams navigable in fact.

The other Miller Bill (HR 2973) would amend another part of the Federal Power Act so as to limit FPC jurisdiction over interstate border-line and also over so-called "slopover" power sales.

Another important regulatory bill which managed to reach the hearing stage was the White Bill (S 1333) to reorganize the Federal Communications Commission by dividing it into two divisions and imposing certain restrictions on its power to operate radio broadcasts.

Inactive Bills

As will be seen from the foregoing résumé of bills which actually reached the hearing stage, there were scores of bills introduced during the 80th Congress which got no farther than a committee pigeonhole. Here is a partial list of some of these measures, which appear to be worthy of at least passing notice:

Labor Union Reform Bills

SRes 140 — Morse, Republican, Oregon. Probes labor-management operations on Federal construction projects.

Reclamation, Flood Control, and Public Power Bills

HR 3819—Wilson, Republican, Indiana. Deauthorizes Clark Hill dam, Georgia, as Army Engineer project. Hearings held by House Public Works subcommittee. No action.

HR 3826 — Dondero, Republican, Michigan. Permits Savannah River Power Company to install and operate power facilities at Clark Hill dam, Georgia.

HR 3969 — Horan, Republican, Washington. Establishes Columbia Interstate Commission to develop Northwest under joint Federal-local control.

HR 4027 — Welch, Republican, California. Transfers power facilities

¶ "SUMMING *up the work of the 80th Congress, it would appear that, although the laws actually enacted to date have not been of major importance to the utility industry (with a possible exception of the Taft-Hartley Act), much progress has been made on legislation of outstanding importance.*"

at Fort Peck dam to Interior Department.

HR 4152 — Miller, Democrat, California. Authorizes reclamation development of American River Basin, California.

HR 4386 — Harless, Democrat, Arizona. Authorizes Army Engineers' survey of dredging Colorado river from Gulf of California to Imperial dam, Arizona.

S 1156 — Murray, Democrat, Montana. Establishes Missouri Valley Authority.

S 1277 — McKellar, Democrat, Tennessee. Limits powers of TVA administrator.

S 1305 — Knowland, Republican, California. Amends Federal Power Act re states rights at dam sites.

S 1534 — Russell, Democrat, Georgia, and Maybank, Democrat, South Carolina. Establishes Savannah River Authority.

S 1647 — Taylor, Democrat, Idaho. Sets up autonomous Columbia Valley Authority.

S 1719 — Murray, Democrat, Montana. Establishes Alaskan Industrial Commission to plan development of Alaska, including electric power.

Regulatory and Miscellaneous Bills

HR 3715 — Byrnes, Republican, Wisconsin. Amends Federal Power Act to allow accounting priorities to state commission requirements ahead of FPC.

HR 4008-9 — Hugh D. Scott, Jr., Republican, Pennsylvania. Amends Public Utility Holding Company Act.

HR 4099 — Priest, Democrat, Tennessee. Amends Natural Gas Act to remove independent oil-gas producers from FPC control.

S 1452—Pepper, Democrat, Florida, and five others. Aids industrialization of undeveloped areas.

SJRes 155 — Aiken, Republican, Vermont. Rescinds FPC order permitting Bellows Falls Hydro-Electric Corporation to develop Wilder dam, Vermont.

Conclusion

SUMMING up the work of the 80th Congress, it would appear that, although the laws actually enacted to date have not been of major importance to the utility industry (with a possible exception of the Taft-Hartley Act), much progress has been made on legislation which this writer feels to be of outstanding importance. The St. Lawrence seaway, the Dondero, and the Rizley bills, to mention just three, are in the position to make more progress during the next session. Other regulatory measures will probably get farther along in the legislative processes. All in all, it is too early to judge the work of the 80th Congress, even with respect to matters of public utility interest, simply on the basis of the first session.

Correction!

THROUGH *a typographical misalignment of text, a short statement entitled "We Accept the Super State," which appeared in the July 31st issue of this magazine, page 162, was erroneously attributed to Mr. Alfred P. Sloan, Jr., chairman of General Motors Corporation. The proper credit for virtually all of this statement should have been given to the Industrial News Review.*

Although the slip was entirely inadvertent, the editors regret any misunderstanding which may have been caused thereby.

Washington and the Utilities

Interior Passing the Hat?

CONGRESS had hardly left Washington for the summer recess when an Interior Department spokesman began to call for more money for public reclamation power projects. Reclamation Bureau Chief Michael Straus, at a meeting of regional officials in Salt Lake City late in July, said his bureau would run short of money. Straus also advised that the bureau would run short of money on its three principal projects — Columbia Basin, Colorado-Big Thompson, and Davis dam.

Both Straus and Interior Secretary Krug said they expected to ask for a deficiency appropriation of $36,000,000 for these projects in January. On all other projects sufficient money apparently was available to complete the 1948 building program. When congressional conferees on the Interior Department Appropriations Bill finished work in the closing days of the last session, they were agreed that no deficiency allotment would be allowed. Another possible check on Reclamation spending was revealed when it was learned that the Senate Appropriations Committee would require Reclamation to submit quarterly progress reports on the expenditure of its funds.

ASIDE from this talk of more money needed for the future, Interior's Reclamation Bureau will start work this fiscal year on 15 new multipurpose dams, with the target date for their completion in 1954. This was one significant development at the Reclamation conference of Washington and regional officials in Salt Lake City. Ostensibly, the meeting was to allocate the construction funds available during fiscal year 1948 (July 1, 1947, to June 30, 1948). But Reclamation Bureau Chief Michael Straus switched the emphasis of the gathering in his closing remarks. First, he announced that the $195,000,000 program for this year "committed" the bureau to a development program costing $1,335,000,000 by 1954. Straus declared that future budget requests for the next six years would be something like this: 1949 — $254,000,000; 1950 — $295,000,000; 1951 — $252,000,000; 1952 — $200,000,000; 1953 — $181,000,000; 1954 — $153,000,000. Total hydro installation in this program is estimated at 2,250,000 kilowatts of capacity.

The House Appropriations Committee members, however, had their own ideas for handling flood control on a 6-year basis. Their plan is to concentrate on the most urgent projects, get them built quickly, and then take up the next project in the order of priority.

"Suppose we're going to build three big dams in the same watershed," Representative Engel, Michigan Republican, pointed out. "If we start them all at the same time, we'll spread our available funds over all three. Construction will be slower and more expensive and we won't get the benefits of flood control until all three are completed.

"But, if we concentrate our money on one project at a time, we can appropriate large enough sums to enable the most efficient and quickest kind of construction. We'll save money, because a contractor can use bigger equipment on a bigger job. And we'll have the benefit of the first dam while we're building the second."

Representative Engel, chairman of the War Department subcommittee of the

House Appropriations group, has been talking over the problem with members of his committee, including Representative Tibbott (Republican, Pennsylvania) and with Army Engineers.

British Crisis to Slow Socialization?

WASHINGTON diplomatic circles buzzed with rumors over the effect which the current crisis of the British Labor government may have on that government's far-reaching plan for nationalizing Great Britain's public utilities and other key industries. Speculation that Britain's Labor government might postpone or even abandon pending nationalization measures in view of the country's economic crisis appeared in most London newspapers. Official quarters declined comment.

The almost invariably well-informed London *Observer* said it now "looks as if" nationalization of iron and steel, scheduled for action in Parliament next October, will be dropped.

"The question was discussed by the cabinet last week and although nothing was finally decided the opinion was strongly expressed that this was not the time to nationalize the industry," the *Observer* said.

Failure to go ahead with nationalizing iron and steel, gas and electricity, and other items on its program undoubtedly would bring severe criticism from many government supporters, who hold that Socialism must be achieved quickly to put the country's economy on a permanently strong basis.

Conservatives, on the other hand, would welcome the abandonment of further Socialist experiments. They have mobilized for an all-out fight against bringing iron and steel under public ownership.

In slightly more than two years of office, the government has nationalized the coal mines, the Bank of England, civil aviation, and the world-wide Cable and Wireless, Ltd., facilities. A bill nationalizing long-distance transport has been passed by the House of Commons and minor objections raised by the House of Lords are being ironed out.

The House of Lords, on July 31st, passed the bill nationalizing British electricity generating and distributing companies, estimated to cost approximately $1,400,000,000.

The government will acquire about 190 private companies. The House of Commons already had passed the measure, which becomes effective January 1st. Commons must act again on minor amendments.

The government announced it contemplated expansion to fill a critical British need for more electric power.

Anticlosed Shop Test

CONSTITUTIONALITY of Arizona's "right to work law," outlawing the closed shop, was upheld July 25th by Maricopa County Superior Court Judge M. T. Phelps in a decision which opponents of the law said would be appealed "all the way to the U. S. Supreme Court."

The decision dismissed a suit brought by the American Federation of Labor, which had announced Arizona would be a testing ground for similar legislation in other states.

Ruling that the act does not violate Federal constitutional provisions, the court termed "without merit" the contention that it restrains freedom of assembly and speech.

Judge Phelps said it "supersedes any previous provisions of the (Arizona) Constitution with which it conflicts" and that it does not conflict with the National Labor Relations Act.

Noting that the measure forbids the closed shop contract, Judge Phelps said there is "some doubt" concerning the possibility of the law's interference with constitutional guaranty of freedom of contract. "But," he added, "this doubt is insufficient to overthrow the presumption of its validity and specifically to justify a trial court in declaring it unconstitutional."

The Arizona anticlosed shop law was adopted by the voters at last November's general election after a bitter contest by organized labor.

The litigation challenging the law was regarded as having lost much of its significance with enactment by Congress of the Taft-Hartley Act, which bans the closed shop in interstate commerce. Labor spokesmen declared, however, that Judge Phelps' decision would be appealed immediately to the Arizona Supreme Court and if sustained there would be carried further.

One phase of legal controversy over the law already is before the high state tribunal. It concerns the judicial right to proceed with examination of the sufficiency of petitions by which the measure was submitted to the voters.

THE state supreme court already has called off temporarily a probe of the petitions by William C. Eliot, a special master appointed by Superior Judge Edwin Beauchamp, and set final hearing before it October 6th.

In that action, proponents of the measure claim Judge Beauchamp lacked authority to "look behind" a legislative act of the people after it has been declared the law of the state. Two union officials, in starting that suit a year ago, claimed the petitions which placed the issue on the ballot contained insufficient valid signatures of qualified electors.

Industry Gas Rate Figures

NATURAL gas utilities are reported to be preparing a comparative rate summary of their own to offset press publicity which opposed passage of the Rizley-Moore Bill (HR 4051). This follows widespread publication of allegedly misleading analysis of the adverse effects which passage of the Rizley-Moore Bill would have on consumers gas prices. The study now under way will probably contain figures designed to give a more accurate picture of the bill's effect on gas prices.

First use of the new study will probably be in May, by the subcommittee of the Senate Interstate and Foreign Commerce Committee, which will hold hearings in cities falling within the proviso of the Rizley-Moore Bill's operation. Senator Moore (Republican, Oklahoma), one of the authors of the bill, is slated to conduct the subcommittee field hearings.

The new studies are said to show that FPC's assumption that field prices for gas will rise as high as 8½ cents a thousand cubic feet is unfounded. They may point out instances where FPC departed from its own accounting practices in estimating consumer costs.

Miscellaneous

THE new home of the Securities and Exchange Commission in Washington, D. C., will be the temporary wartime quarters of the Reconstruction Finance Corporation at 2nd and D streets Northwest, officially known as Annexes No. 1 and No. 2. SEC was voted funds to begin moving operations from Philadelphia immediately. But the bulk of the SEC personnel will not begin migration from Philadelphia until after the middle of October. About 70 per cent of nearly 900 SEC employees have indicated a willingness to make the change.

Settlement of a power transmission issue between Federal and state power agencies is apparently near in Arizona. Under the expected arrangement, Southwestern Power Administration will build backbone transmission facilities from Hoover dam to Davis dam, Arizona, and from Davis dam to locations in central Arizona.

From there the Arizona Power Authority will transmit it to municipalities, co-ops, and private companies. Differences arose when the state power authority, set up under the Boulder Canyon Act, sought to build lines to Hoover dam to relieve the state's power shortage. Arizona has been entitled to a large amount of Hoover power, but has never built a line to take any of it.

Exchange Calls And Gossip

FCC Turnover Likely Late This Year

THE summer doldrums in Washington have brought about the usual number of rumors of shake-ups in Federal regulatory personnel. This is a regular feature of the sweltering "dog days" in the nation's capital, and, generally, nobody takes them too seriously. But the frequency and apparent authenticity of rumors that hint of a minor exodus from the bench of the Federal Communications Commission before the end of 1947 seem to carry a great deal more weight than the standard gossamer summer gossip. They concern three FCC members—Chairman Denny and Commissioners Jett and Durr, who are said to be eyeing other jobs. First brought to the fore by the radio industry press, the stories are gathering momentum as they spread, and they seem to be on the beam.

Chairman Denny, it is said, is slated to move into the top legal post with the National Broadcasting Company. He is anxious to do better financially than the $10,000 yearly he gets as FCC head, and he is also said to be unhappy at the recent switch in FCC personnel which substituted Republican Representative Robert F. Jones, of Ohio, for former FCC member Ray C. Wakefield. His resignation has been expected for some time in Washington. Commissioner Jett, long-time government career man and top-ranking radio engineer, is being urged to take a United Nations post on the International Frequency List Commission, and he might do so if that board moves from its present location in Berne, Switzerland. He has been rumored leaving the commission on other occasions but has always insisted he will remain in government service.

COMMISSIONER Durr, the farthest left of any FCC member, is believed likely to face considerable opposition when his renomination comes up next June. His sponsorship of the memorable FCC *Blue Book* earned him the undying enmity of radio broadcasters. He has also repeatedly urged that the telegraph industry be federalized and operated as a government monopoly. A more conservative Senate may be expected to look with some question on such a record. So rumor has it that Durr may go back to teaching law school.

If all or part of this shake-up occurs, it could mean considerable change in philosophy of the commission. A more tolerant attitude toward Western Union's efforts to get on its feet might be expected. It also might take the heat out of congressional plans to rewrite the Federal Communications Act of 1934. But to accomplish this, the new appointees would have to be carefully selected. Among the names being bandied about at present as possible replacements when and if the vacancies in FCC occur are J. Leonard Reinsch, presidential radio adviser and active broadcasting executive, and former Democratic Senators Mead and Wheeler.

Long Lines Moves for CIO-CWA Showdown

THE Long Lines Department of the American Telephone and Telegraph Company has precipitated a showdown of union strength this fall. By October 10th, the American Union of Tele-

phone Workers (CIO) must furnish proof, by submission of signed dues check-off cards, that it represents a majority of the 22,000 employees in the Long Lines Department. The company had to withdraw recognition entirely from the CIO unit on July 31st before the union would agree to certify that it had bargaining rights. CIO capitulation means a 60-day battle between national unions on a local-by-local basis for the right to represent Long Lines workers.

The AUTW is headed by John J. Moran, former vice president of the National Federation of Telephone Workers. Moran and his group led the bolt from the old NFTW into the new Telephone Workers Organizing Committee, a temporary CIO organizing outfit with a goal of establishing a CIO international union among telephone workers. Along with the AUTW came several large manufacturing unions from Western Electric, leading the CIO to claim to represent 100,000 workers. So suddenly did Moran and his unit desert the NFTW that it is reliably reported he had already notified the Long Lines division of his union's intention to affiliate with the Communications Workers of America, an independent national union headed by Joseph A. Beirne, and the successor to NFTW.

SOMETIME in July, Beirne is said to have written G. S. Dring, head of the Long Lines division, reminding him that Moran himself had advised that a CWA unit would next represent the Long Lines workers. Beirne wanted to know just where matters now stood between Long Lines and the American Union of Telephone Workers. This could be advanced as one reason for Long Lines' demand that the CIO group prove they have the votes to represent Long Lines employees.

Another, more likely reason for the AT&T action was the standard practice of Bell companies of insisting on new certification of unions claiming to represent a majority of workers. The companies have been willing to accept any of three methods of establishing proof of union representation: (1) a certification from a reputable outside auditing agency from which the company can be assured that the labor organization has been duly designated for collective bargaining; (2) individual signed statements of employees indicating their affiliation with a bargaining unit (the new dues checkoff cards, required by the Taft-Hartley Act, are acceptable); and (3) an election under supervision of the National Labor Relations Board.

Units of the new Communications Workers of America, and member unions affiliated with the American Federation of Labor, have been furnishing proof via either one of the first two methods suggested by the companies. A similar request was made of the American Union of Telephone Workers. Apparently, the AUTW declined to make such a certification voluntarily.

OTHER union leaders are quick to point out what they think is the reason AUTW hesitated in certifying bargaining representation. They make no bones about their belief that AUTW does not have the votes to back up its claims. They get a little statistical to prove it, too. Here is the way they have it figured out: Total nonsupervisory personnel in Long Lines division is 22,000. The highest membership ever recorded by AUTW was approximately 17,000. Every telephone union lost membership as a result of the strike, so figuring percentagewise, they reckon AUTW's present strength at no more than 15,000. Recently AUTW held a referendum which swung the union definitely into the CIO camp. No figures on the balloting are available, but CIO reported that the switch was carried by a 5-to-3 margin. Less than 8,000 voted, so CIO rang up only 5,000 votes.

OBVIOUSLY to represent 22,000 workers a union would have to have 11,000 members. There is some reason to think that the CIO will pick up some more votes among registered AUTW personnel, because, once the affiliation battle is over, its members tend to go

along with the majority. However, there is undoubtedly a strong sentiment for the Communications Workers of America rampant in the Long Lines union. Nobody believes for a minute that other unions are not bending every effort to attract Long Lines membership. If other unions can rouse real opposition to the CIO within the union, perhaps the CIO could not garner the necessary 11,000 votes.

What would be the reaction if CIO lost its first pitched battle? It just might break the backbone of the renegade movement, and thus entrench the new and reviving CWA more solidly than ever as the number one representative of telephone workers in the Bell system. CWA has been directing its organizational efforts toward emphasizing the need for one single union as the best bargaining agency to deal with Bell system. It may be a long, hard fight, but right now CWA appears fresh and ready for rounds and rounds of interunion combat. CWA still represents nearly 50 per cent of all wire workers, and most of these units look very safe from raids of other unions. A natural corollary to this CWA strength is that both CIO and AFL may eventually make more flattering offers to the Beirne group, with affiliation still a possibility in the future.

Robbing Peter to Pay Paul?

BOTH Bell and the independent telephone companies are reported aroused over the proposal of Joseph A. Beirne, CWA president, that profits and dividend payments be reduced as an aid to maintenance of stable economy. Beirne submitted this proposal to the joint congressional committee on the economic report. He wrote Senator Robert A. Taft, Republican of Ohio, that "many industries, particularly public utilities, represent noncompetitive, riskless enterprises and their rates of interest should be closer to the 2½ per cent rate paid by the United States government, rather than to the 6 per cent and higher rates paid by many corporations."

Beirne then added: "Dollars in the hands of workers represent consumer purchasing power. Dollars in the hands of stockholders and corporations are not contributors to the same degree to industrial prosperity as is consumer purchasing power. This does not imply that industry should not have a sufficient income to insure a fair return on its investment, plus sufficient funds for expansion and technological improvement. But alleged technological improvement and expansion at the price of a lowered standard of living for American workers and their families would defeat the entire purpose of our society and community interests."

Telephone industry men were at first somewhat concerned at the thought that a union leader actually was talking against the welfare of his own industry, to comment very coherently. Later they recovered and had much to say. Boiled down considerably, it amounted to this: The telephone business is not noncompetitive, for it must compete with other mediums of communication which are also advancing technologically. It is not riskless, because in order to obtain the large sums needed for expansion and modernization, it must pay adequate return on investments, or it simply cannot get the money.

INDUSTRY men also add that any elementary economist can prove that dollars in the hands of stockholders and corporations are potentially creators of far more industrial prosperity than spending money in the hands of workers. Finally, they deny the implication that expansion and technological improvement is being achieved "at the price of a lowered standard of living for American workers and their families." They might also add that telephone workers themselves own a sizable interest in the stock of the Bell system. They have invested some of their "consumer dollars" principally because of the attractive rates of return offered. Lowering profits to increase wages could be likened to cutting off one's nose to spite one's face.

Financial News and Comment

By OWEN ELY

Electric Utilities' Return on Rate Base Not Excessive

Some utility analysts have been worried over the fact that certain electric utility companies have been earning 7 or 8 per cent on net "original cost" (plus working capital), owing largely to the ending of excess profits taxes. Originally it was feared that some of the more strict state commissions would immediately demand rate cuts sufficient to cancel all the gains resulting from these tax savings. However, in so far as the writer is aware, there is no case on record where a state commission has demanded an exorbitant reduction. There have, of course, been many rate cuts, voluntary or forced, during the past year and a half—as evidenced by the decline in the average residential rate from 3.41 cents at the end of 1945 to 3.15 cents for the twelve months ended May 31, 1947. But the utilities have been permitted to "sweeten" their earnings a little. Major factors have been a reasonable and fair degree of coöperation between the companies and the commissions—with few rate cuts taken to the courts—and the realization by the regulating agencies that operating costs are steadily rising and may soon overtake the increase in revenues.

It is difficult to calculate the average return on investment for all the electric utilities, because up-to-date plant figures are not available. However, according to Federal Power Commission figures the ratio of operating income to net plant plus working capital averaged about 6 per cent during the years 1937-43. During 1944-5 the return advanced to 6.9 per cent and for 1946 (retaining the 1945 plant figure) the ratio would be exactly 7 per cent. The reason why the gain was reflected principally in 1945 (instead of in 1946 when taxes were changed) was a technical one; in 1945 the companies saved on taxes by incurring large nonrecurring amortization charges "below the line." In 1946 tax savings amounted to $45,000,000 but the reduction in special chargeoffs was $72,000,000. Hence, so far as net operating income was concerned, the tax saving was substantially discounted a year ahead of time. In net income, however, the saving was not reflected until 1946.

Figures released thus far for 1947 seem to indicate that earnings this year will run about the same as last year, or slightly lower. Following are the percentage changes by months:

Month	*Operating Income*	*Net Income*
January	D3.8%	D .8%
February	D3.9	D5.3
March	D .5	D1.2
April	3.2	7.7
May	.4	16.1

It appears likely that, with operating income making a poorer showing than net income, the percentage earned will dip below the 7 per cent level this year, especially since plant investment is now rising because of investment of new money.

It is interesting to speculate about the average percentage the utilities were actually earning on depreciated original cost back in 1930, had the balance sheet accounts been adjusted in those days as they are now. In that year utilities had operating income of $911,000,000, compared with $834,000,000 in the twelve months ended May, 1947. Yet in 1930

only 86,000,000 kilowatt hours were produced compared with some 200,000,000 at the current rate (Edison Electric Institute figures). Assuming that operating efficiency had remained unchanged during the sixteen years, the 1930 plant need only have been 43 per cent of the present plant or about $5,200,000,000. The return on such an investment would have been 17.6 per cent—a marvelous return for a regulated industry.

LET'S reverse the statistical projection. In 1927 net plant account was about $10,000,000,000 and in 1932 about $13,500,000,000 (according to the 5-year Census figures); 1930 would probably have been around the $12,000,000,000 level. The percentage return approximated 7.6 per cent. Now let's assume that plant investment increased proportionately to output—the result would be net plant account of $28,000,000,000 in 1946. Based on this fictitious figure, the percentage earned would be only 2.35 per cent!

These figures are of course ridiculous. What's the answer? It's compounded of accounting and operating factors as follows: (1) Plant account was too high in 1930—arbitrary write-ups (over cost of acquisition) probably amounted to some $2,000,000,000 to $3,000,000,000. These write-ups have been practically all eliminated together with another billion or so representing the excess cost of acquisition over estimated original cost. (2) Plant capacity was increased one-third during 1930-46 by investment of possibly $3,000,000,000 to $4,000,000,000; this new plant probably cost somewhat less in dollars per kilowatt capacity than the 1930 plant. The additional investment about offset the write-offs and other adjustments. (3) In the meantime, fuel burning efficiency increased nearly 25 per cent; pounds of fuel per kilowatt hour dropped from 1.60 in 1930 to 1.29 in 1946. (4) Distribution costs were reduced by delivering constantly bigger "loads" to the average customer. (5) With more efficient hookups and power pools (developed through the community of interest and centralized management of the much-maligned holding companies) the number of kilowatt hours generated annually per kilowatt capacity in steam plants increased 58 per cent. (6) Line losses and other wastes of electricity were considerably reduced, though exact figures are difficult to compile. Putting all these percentages together, we find that the utilities in 1946 produced 133 per cent more electricity than in 1930—with about the same stated dollar investment—to earn less money!

A VITAL fact from a regulatory standpoint is that the utilities today are using "borrowed" plant capacity—they are working the present plant too hard and are not maintaining a safe reserve of capacity. In 1930 the kilowatts generated per kilowatt capacity were only 30 per cent of the theoretical maximum (using all capacity continuously 8,760 hours per year). By 1946 usage had increased to 51 per cent of the theoretical maximum. Comparable figures are not available for the ratio of reserve capacity to peak loads, but we do know that this ratio dropped from 35 per cent in 1939 to only 12 per cent in 1946.

The utilities are planning to increase their rated capacity about one-quarter over the next four years at an estimated cost of several billion dollars. Increase in effective capacity may be still larger, since it now seems customary to work efficient plants well in excess of their rated capacity.

However, at least half the new capacity should be devoted to restoring reserve capacity to a more normal ratio to peak loads. So far as earnings are concerned, this portion of the investment will not earn any income except as it may permit more efficient units to be substituted for stand-by generators now pressed into service. Moreover, since the new plant will cost at least twice as much as the old, operating savings will be partly offset by higher capital costs.

Assuming that the investment made to restore reserve capacity might approximate $2,000,000,000, present plant would thereby be increased to $14,000,000,000 and the 1946 return on investment would

be reduced to 6.1 per cent, or approximately the level regarded as "fair return" by the majority of the state commissions. And allowing for the present rise in fuel costs which will not be fully felt until next year, it seems probably that the *"pro forma"* rate of return is now below the 6 per cent level.

Further residential rate cuts, therefore, do not seem warranted save in exceptional cases. Next year some electric utilities may have to ask for rate increases if they are to maintain earnings at a high enough level to permit permanent financing for their construction programs.

Some Electric Rates Are Increasing

HISTORICAL data on electric rates are obtainable from the 1946 *Statistical Bulletin* of the Edison Electric Institute, recently released. (See also page 308, this issue.) While residential rates are steadily declining, rates charged other utility consumers (with the exception of street lighting) have increased in the past three years. Probably the principal factor in this increase has been the "fuel clause" in many industrial and commercial rate contracts whereby the rate is automatically increased as fuel costs gain. With the exception of Consolidated Edison and perhaps a few other companies, electric companies' *residential* rate schedules do not contain these escalator clauses. Moreover, state commissions for political or other reasons are more interested in reducing residential rates than the rates to other consumers.

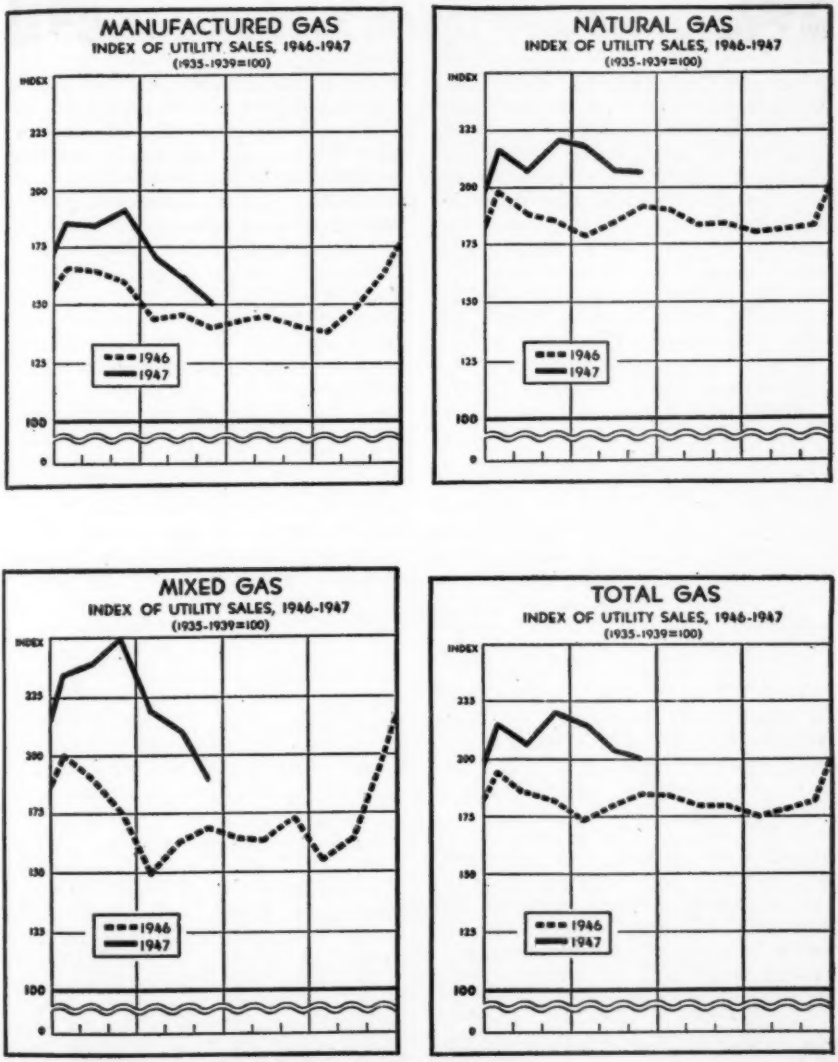
In the accompanying table we have reduced average revenues per kilowatt hour for various classes of customers to an index basis, with the 1927 figure as 100 per cent in each case. Thus we find that during the past two decades residential rates have declined 53 per cent, commercial 37 per cent, industrial 33 per cent, street lighting 23 per cent, other public authorities 40 per cent, electric railroads 21 per cent, and transit companies only 8 per cent. For all customers rates are down one-third.

During 1943-46 residential rates have dropped 10 per cent and street-lighting rates 6 per cent. On the other hand commercial rates have advanced 2 per cent, industrial 9 per cent, other public authorities 27 per cent, street railways 6 per cent, and electrified railroads 5 per cent. The increase for all customers was 9 per cent.

ELECTRIC RATE INDEXES FOR CONSUMER CLASSES (1927 = 100%)

Year	*Residential*	*Commercial*	*Industrial*	*Street Lighting*	*Other Public Authorities*	*Transit*	*Electric Railroads*	*All Ultimate Customers*
1946	47%	63%	67%	77%	60%	92%	79%	67%
1945	50	62	63	79	53	90	79	64
1944	51	61	62	80	51	88	78	61
1943	53	61	62	82	47	87	75	61
1942	54	63	64	83	65	88	75	66
1941	55	66	69	82	72	87	76	70
1940	56	69	73	84	76	87	76	76
1939	59	71	77	85	73	88	76	80
1938	61	74	82	87	75	89	81	85
1937	63	76	78	88	73	89	82	80
1936	68	80	82	82	86	90	84	84
1935	73	85	89	86	86	92	92	91
1934	78	89	93	97	92	91	93	95
1933	81	91	95	99	95	93	97	98
1932	82	92	105	100	89	96	106	105
1931	85	93	101	96	101	97	104	102
1930	89	92	97	97	111	97	99	98
1929	93	95	95	98	114	97	98	95
1928	97	99	96	98	112	98	96	98
1927	100	100	100	100	100	100	100	100

Monthly Utility Gas Sales



American Gas Association, Monthly Bulletin of Utility Gas Sales

What Others Think

EEI *Statistical Bulletin* Reveals Industry's Growth and Plans

FOLLOWING its annual custom, the Edison Electric Institute has issued its *Statistical Bulletin*, for the year 1946. There are 36 pages, made up chiefly of tables and charts devoted to statistical information. These are presented under the general headings of Generating Capacity (kilowatt); Generation (kilowatt hour); Fuel Used, Construction Expenditures; Sales and Revenue; and Financial Statistics—Electric Utility Companies.

In announcing the publication of this year's bulletin early in August, Charles E. Oakes, president of Edison Electric Institute, said that $5,000,000,000 will be spent by electric light and power companies in the United States on construction in the next five years. Construction volume by locally operated electric power companies has already accelerated to the rate of a billion dollars a year, he stated, and this rate is expected to be maintained throughout this year and during the following four years.

It was also noted that the total of $5,000,000,000 is more than one-third of the present entire capitalization, $13,000,000,000, of the 65-year-old business-managed electric industry. It will add more new generating capacity to local company plants than is presently installed in all of the governmentally owned power projects, including TVA, Boulder dam, and Bonneville. (At the end of 1946 the electric companies had 40,360,000 kilowatts of generating capacity installed, while the Federal projects and other public installations totaled approximately 10,000,000.)

ABOUT 95 per cent of the new generating installations will consist of steam turbines using coal, oil, or gas. Despite the large increase in governmental hydroelectric developments in recent years, the installed capacity of all water power plants still comprises less than 30 per cent of the total generating installations. In 1936 it was 29 per cent and in 1926 it was 27 per cent. Within the next three or four years the percentage may drop below the 1926 figure.

With reference to the business in 1946, the *Statistical Bulletin* states that the electric light and power industry completed one of the most active years in its history. Total sales of current by all utilities—public and private—approximated 191,000,000,000 kilowatt hours, a decrease of 1½ per cent from the 193,558,000,000 sold in 1945. Revenues from these sales approximated $3,460,000,000, an increase of 3½ per cent over the $3,341,518,000 of the year before. Average unit prices continued to decrease, dropping from an average charge of 3.41 cents in 1945 to 3.22 cents per kilowatt hour in 1946 for residential service.

For the year 1946 as a whole, the average residential customer increased his consumption of electricity by 100 kilowatt hours per year, bringing the total to 1,329 as compared with 1,229 the year before. (At the present time average consumption is approaching 1,400 kilowatt hours per year.)

As to new customers added, both in homes and farms the bulletin discloses that during the year, 2,109,218 new customers were added to the books of the local electric utility systems bringing the total at the end of the year to 36,140,291. This increase was accomplished in spite of the housing shortage and the difficulties encountered in procuring poles, wire, and electrical equipment. The gain of 1,800,000 in homes and farms constitutes the largest number of new connections in the history of the utility industry. It

is almost twice the 836,000 added in 1945 and exceeds by 10 per cent the previous high record made in 1924.

In 1946, over 400,000 additional farms were connected to electric power lines, bringing the total at the end of the year to 3,336,000. This represents 57 per cent of the number of farms reported by the Census at the close of 1944. In addition to farm homes already connected, there is an additional 800,000 farms, reached by electric power lines, which have not yet taken service. The total number of farms reached is equal to three-quarters of all occupied farms in the United States.

On the financial side of the electric utility industry the statements in the bulletin show that during the year a large decrease in fixed charges of electric companies was accomplished, representing the cumulative effect of the refunding programs of the past few years. Interest, amortization, and other deductions from income, which were $360,000,000 in 1945, declined by $91,000,000 to a total of only $269,000,000 in 1946.

The year's increase of $109,000,000 in gross revenues was wiped out by a rise of $133,000,000 in operating expenses, two-thirds of which were attributable to increased wages and salaries. In spite of favorable water conditions over most of the country, which enabled hydroelectric plants to operate at high levels, the cost of fuel rose by $42,000,000 and reflected the increase in the price of coal (or its equivalent in other fuels) from $4.45 per ton in 1945 to $4.89 in 1946. A partial offset to high operating costs was caused by the ending of the Federal "excess profits" tax but this saving was not as great as had been expected.

The detailed information upon many phases of the electric light and power industry, as set forth in this year's *Statistical Bulletin*, in several instances is presented in comparative form for a 25-year period. Thus there is given an illuminating picture of the remarkable growth of the service rendered by this investor-owned, business-managed industry.

—R. S. C.

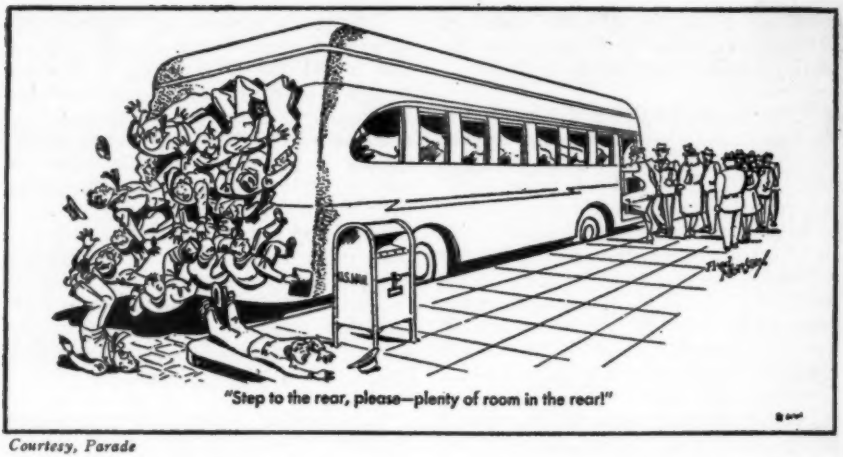
Impact of Federal Income Tax a Threat To Private Power Industry

There has been issued recently another of the reports by H. B. Dorau and J. R. Foster, in the series of statistical and analytical studies on taxation of electric utilities. This present report, entitled "Federal Taxes Measured by Income of Private Enterprise Electric Utilities"—as also the previous one on the "Federal Electrical Energy Tax"—(reviewed in Public Utilities Fortnightly, issue of June 5, 1947, page 691), was made at the request of the Edison Electric Institute and the National Association of Electric Companies.

Introduced by comments summarizing the disclosures of the studies, this report is divided into four sections; *viz.*: I. Taxes Paid by Private Electric Utility Enterprises; II. Governmentally Owned Electric Utility Enterprises Are Exempt; III. Tax Revenues Which Would Be Available if Governmentally Owned Enterprises Were Taxed Equally with Private Enterprise; and IV. The Injury to Private Enterprise.

In addition to the analyses under these headings, supplemental information is included, in the form of a score or more of charts and schedules, to supply supporting data to the main text.

That this question of Federal taxation is one of extreme seriousness to the private electric industry is indicated in the initial paragraph of the prefatory summary. The authors state that while their "studies are only partially completed . . . it is clearly evident, however, from the results so far ob-



"Step to the rear, please—plenty of room in the rear!"

Courtesy, Parade

tained, that the impact of the Federal income tax threatens the economic position and even the continued existence of private enterprise in the electric utility industry." Further, the report states:

> On the one hand the income of private enterprise is taxed at rates which are high in relation to those which were effective before the war. The same taxable income, taxed in the hands of the corporation, is retaxed at the personal income tax level when paid to investors as dividends. On the other hand, the return on the invested capital of non-Federal, governmentally owned electric enterprises is exempt from taxation, *both* when received by the enterprise and when received by its bondholders as interest.
>
> The consequences of this unlike treatment of enterprises supplying the same kind of service to the same kind of customers and the relatively high tax burden on private electric enterprise are (1) to spur piecemeal socialization of the electric utility industry, (2) unfair and unjust discrimination against business enterprise, (3) an unequal and inequitable distribution of the tax burden among taxpayers, (4) unfair and unjust discrimination against consumers of electric service, and (5) an uneconomic development of the electric industry.

Attention is then called to the fact that

> The capitalized value of the Federal preferential tax treatment accorded to publicly owned electric enterprises is in the aggregate more than one-third of the total value of the investment in the private, taxpaying electric utility industry.

> The costs to private electric enterprise of supplying service reflect the double taxation of private capital. The utility corporation is subject not only to direct taxation, at rates which are relatively high in relation to prewar rates, but the interest and dividends paid to investors are again subjected to taxation at personal income tax rates.

This means that the cost of electric service under private ownership is increased in two ways over what it would be under tax-exempt governmental ownership, as the report thus indicates:

> . . . First, the cost disadvantage represents the taxes actually paid by privately owned enterprises, which would not be paid by governmental owned enterprises. Second, the higher costs of service under private ownership represent a hidden tax equal to the difference between yield to owners of tax exempt securities and the necessary return to securities the income of which is taxable.

THESE two exemption factors, it appears, furnish a "powerful reason for the rapid growth in governmentally owned enterprise during the past twelve years, during which period their production capacity has quadrupled." Private electric enterprise, it is noted, has been entirely driven from the state of Nebraska, largely from Tennessee, and is threatened with extinction in the state of Washington.

It is of special significance, as the authors point out, that the socialization

of the electric industry is gradual, and that actually the substitution is being effected through bribery. They state that

> . . . it is being accomplished by a back door process which depends upon the cost advantages which result from these two forms of tax discrimination. These cost advantages are available to those areas which accept public ownership and are at the expense of those who do not. In effect the people are being bribed to substitute public ownership for private enterprise.
>
> No national policy determination that socialization is desirable and in the public interest exists in this country. Such a policy has been accepted by the Labor government in England in response to conditions which the results of private enterprise have enabled this country to avoid. In the United States the process of socialization has been piecemeal, under the lure of the opportunity to avoid the full cost of supplying electric service, under the pressure of invidious rate comparisons, and without a determination on the basis of the actual comparative merits and advantages of private enterprise and public ownership in the absence of tax exemption or other subsidy.
>
> Exemption from tax levies is avoidance of costs in the favored areas but the costs thus avoided must be levied upon and assumed by others. The social cost on a national scale is not reduced. . . .
>
> The costs thus avoided, in the form of the exemptions from Federal income and other Federal taxes, but not including the costs avoided by exemption from state or local taxes or those avoided by possession of other special privileges, amount to at least 14 per cent of operating revenue. That is, if similar tax exemptions were extended to privately owned utilities, the rates charged consumers could be 14 per cent lower without reducing average net return to investors (after personal tax).

THE report then notes that, regardless of the economic or social effects, "the tax discrimination is an unfair treatment of enterprise." It states that

> . . . Private and governmentally owned enterprises supply the same kind of service for the same public purposes. Equitable treatment of citizens requires the elimination of actual and effective discrimination arising out of tax exemption. . . .
>
> The revenue requirements of government are not reduced by exemption of a segment of a large and growing productive enterprise from taxation. The taxes thus lost to the Treasury must be, has been, and is obtained by increasing the taxes on other taxpayers.

Another feature of this piecemeal socialization of the electric industry is that the pressure for it is cumulative. The report shows that

> . . . The higher taxes widen the cost differential between private and public enterprise. Plausible but invalid rate comparisons provide an effective argument for taking advantage of the ever greater cost differential. The increase in number and size of enterprises exempt from taxation tends to widen the cost differential still further. . . .
>
> The pressure toward socialization is also cumulative because the year-by-year tax savings provide the basis for accelerated amortization of the investment by governmentally owned enterprises.

That this tax discrimination also has a definite impact upon the consumers of private electric utilities is described thus:

> In the domain of private electric utilities income taxes generally are borne by consumers. The systems of accounts promulgated by the Federal Power Commission and state commissions require that income taxes as well as other Federal, state, and local taxes be deducted from operating revenue before determination of income on the invested capital of utility enterprises. In the regulation of charges to consumers, income as well as other taxes are generally recognized by commissions as unavoidable costs of service to be deducted before the determination of a fair return. . . .
>
> Income taxes paid by regulated private utility enterprises are in fact shifted to their consumers, subject to lags in the adjustment of rates to changing cost conditions.
>
> Income and other taxes are thus in effect sales taxes. They are "sales taxes" on an essential of modern living. They are substantially borne by the great mass of consumers and not by investors.
>
> Exemption of governmentally owned electric enterprises from taxation results in discrimination against consumers in areas served by private enterprise. The impact of such preferential tax treatment is borne by consumers as long as private enterprise is capable of earning a compensatory return on capital. When the cost disadvantage and competitive position of private enterprise decline so far that the enterprise is no longer capable of earning a compensatory return, the tax burden tends to be shifted from consumers to investors. Similarly, the tax burden is shifted to investors if and so long as the private utility is not allowed by regulatory authority to earn a compensatory return.

THE authors then present in some detail an analysis of the uneconomic consequences of heavy taxation

of private electric enterprise. They state, in part, that

> Heavy taxation of the electric industry is uneconomic because of the way in which the average cost to serve varies with the volume and balance of demand. A heavy tax burden, reflected in the prices charged for the service, limits expansion of consumer demands and prevents the reduction of costs per unit which would result from increased and better balanced demands.
>
> The necessary investment in electric plant and property is larger in relation to annual revenue than is required for other types of industries. . . .
>
> Electric utilities are businesses of sharply decreasing unit costs with increasing demands and scale of operations.
>
> The advantages of large-scale demands for service are expressed in fuller utilization of existing investment in capacity, lower investment cost per unit of capacity, and lower operating costs per unit of output. The larger part of the total cost to serve does not vary significantly with increased output resulting from fuller utilization of capacity. Costs which vary substantially with output are a relatively small proportion of total cost in the case of industries which use large amounts of fixed capital.
>
> The taxes on private electric enterprise, including the income tax, are in large part costs which do not vary with extent of utilization of existing facilities. . . .
>
> Taxes on private electric enterprise are heavier in relation to output than are the taxes levied on nonutility, business, and industrial enterprises, because of the relatively larger amounts of capital required by the electric utility for a given volume of business. . . .
>
> Taxes are operating costs. They tend to raise the price of the service and to curtail demand and output. Therefore, they destroy the substantial economies which would be available from more complete utilization and large-scale operation.

At the close of the summary pages appears this concise statement of the advantages enjoyed by government electric projects by reason of their freedom of tax costs:

> Since governmentally owned enterprises are free of tax costs and tax costs are a substantial proportion of the total costs of supplying utility service, they are able to supply service at lower rates, which induce increased demand. The increased demands, increased output, and improved utilization of plant capacity make possible still lower rates, since in large part the costs remain unchanged and are distributed among many more units of service.

The cogent paragraphs of the prefatory summary, together with the detailed studies in the following four sections, as noted above, provide a presentation on this question of Federal taxation in very complete form. It seems evident that this report by Dr. Herbert B. Dorau, professor of economics, and Dr. J. Rhoads Foster, lecturer on public utilities, New York University, constitutes a valuable contribution upon this important subject.

—R. S. C.

Governmental Expenditures Grow Apace

THE *New England Letter* published by the First National Bank of Boston presents, in its July 31st issue, a startling picture of the vast expansion of Federal government expenditures in recent years.

Under the title, "The Ever-Lengthening Shadow," the accompanying maps vividly illustrate the mounting cost of government. The *Letter* pertinently observes that "while business is booming, it is well not to ignore the colossal expansion of governmental expenditures which may become a cancerous growth."

Then follows this comment:

> Federal expenditures in the calendar year 1929 were less than two-thirds of the total income payments to the inhabitants of California. In 1938, Federal expenditures were equal to the income payments of the 11 western states portrayed by the shaded areas on one of the accompanying maps. By 1946, however, Federal expenditures were equal to the aggregate income payments to all the inhabitants of California, Oregon, Washington, Idaho, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, New Mexico, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, and 54 per cent of Missouri.
>
> . . . Income payments to individuals consist of salaries and wages, dividends and interest, rents, royalties, farm and other entrepreneurial income, direct relief, social se-

1929

Federal expenditures were less than two thirds of the total income payments to individuals in California.

curity benefits, and other labor income. In other words, they include practically all national income except that which is represented by corporate savings.

ATTENTION is called to U. S. Treasury reports which show that "Federal expenditures in 1929 amounted to around $3,300,000,000, and in 1938 to $8,000,000,000, while in 1946 they were $44,000,000,000, or more than five times as much as in the prewar year."

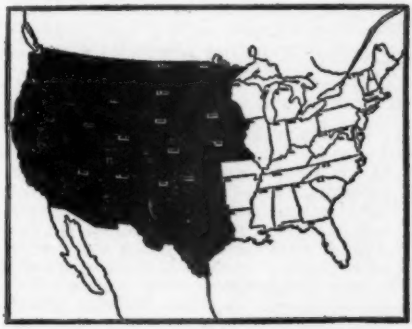
And the revealing comment is made that "in the prosperous year 1929, Federal expenditures represented less than 4 per cent of total national income, whereas in 1946 they were nearly 25 per cent." Also, the further observation is made that

> Federal spending has reached such astronomical proportions as to be virtually meaningless to most persons. Reduced to simple arithmetic, Federal expenditures last year amounted to $1,155 per family, as compared with $250 per family in 1938 and $121 in 1929.

It is pointed out that "these expenditures cover only those of the Federal government." The report then went on to say:

> . . . If state and local governments were included, total public expenditures in 1946 would represent about 30 per cent of national income. In other words, the American people last year, on the average, were devoting nearly one-third of their working time and effort to the government.

The *Letter* notes that "although Federal expenditures have been reduced somewhat below a year ago, they still constitute a threat to our stability and security." And it added that



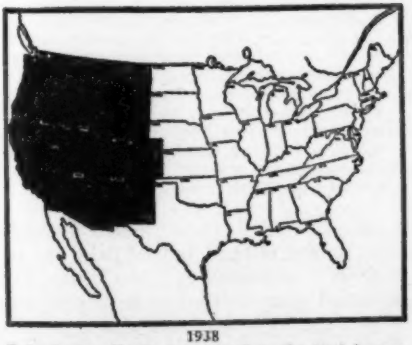
1946

Federal expenditures were equal to the total income payments to all individuals in the shaded areas.

> . . . While governmental costs are relatively rigid, national income fluctuates widely with the business tide. Consequently, in the event of a substantial decline in income, governmental costs might impose a critical strain on our economy and cast a lengthening shadow over our future prospects.

This graphic portrayal of the rapid rise in the cost of government, which compels each American to devote so substantial a portion of his time and effort to its support, serves well to dramatize the portent to be seen in the "everlengthening shadow."

—R. S. C.



1938

Federal expenditures were equal to the total income payments to all individuals in the blackened states.

A Call for Government Power Policy

At the recent congressional committee hearings on appropriations for the Department of the Interior, the application for funds by the Southwestern Power Administration came in for special scrutiny.

This agency asked for $3,725,000, chiefly for extension of its transmission system. No funds at all were granted for that purpose.

One of the business-managed utilities, Arkansas Power & Light Company, which operates in the territory where Southwestern Power Administration's activities are located, has just issued its annual report for 1946. In this report, which is addressed to "Stockholders, Our Employees, and the Public," C. H. Moses, president, under the heading, "Proposed Regional Authority (Biggest in the Nation) Endangers Your Properties," states:

> The Department of the Interior in Washington has set up, by Executive order—not by any act of Congress—a proposed regional authority, called "Southwestern Power Administration," that contemplates the largest political power system in the nation. This SWPA system encompasses a larger territory, embraces more customers, injuriously affects more investors, endangers the collection of more taxes, and covers more population than the Tennessee Valley Authority, the Bonneville Power Administration, the Loup Power Authority, and the Brazos River Conservation and Reclamation District, all combined. . . .

The inequity of the tax freedom of public power bodies is explained thus:

> 1. The utilities in this area cannot long live in competition with the politically managed power system proposed by the SWPA. . . . Both systems cannot live in the same area, reaching the same territory, and serving the same customers.
>
> 2. Simple arithmetic and common sense show that this company cannot give its customers the rates that they deserve, the employees the wages they expect, and the stockholders the dividends to which they are entitled, in competition with political power that is tax free with numerous other subsidies—all to the extent of some 30 cents on the dollar of income.
>
> 3. With these heavy subsidies that are eventually paid by . . . taxpayers, these public agencies can sell power at lower rates . . .
>
> 4. This SWPA could finance with 100 per cent tax-exempt bonds—is exempt from all income taxes, which take 40 per cent of our income. It pays no state, county, school district, city, personal, or other taxes. It is subject to no state or Federal regulation, and can soon become the greatest political power in the state, as grasping bureaucracy knows no limits.

The need for a "government power policy" is then urged by Mr. Moses in these words:

> The essence of Americanism is fair play. Government establishes certain rules and regulations for business to follow. Two of these rules are:
>
> 1. Investors in utility business may earn no more and no less than a fair return on a fair property value. Government establishes regulatory bodies to enforce this rule.
> 2. The utility business is taxed for the support of government.
>
> When government goes into the electric business, in all fairness it should follow the rules that it sets for ordinary business—
>
> 1. It should pay a fair return to its investors—the taxpayers.
> 2. It should pay its share of taxes.
>
> Government in the power business fails in both of these examples of fairness. It pays little or no return on the taxpayers' money used in the business. It pays no Federal taxes. Remove these two subsidies from government power and it would have to double its rates to break even. All losses are charged to the taxpayers.
>
> This is a serious situation for all private industry that must be solved. The condition is cancerous—it cannot be cured by wishful thinking. It is time for the government to realize that this over-hanging threat of governmentally financed and tax-free competition is burdensome and then establish a policy as to whether it is going into the business of distributing power in competition with existing utilities, or whether it is going to be the umpire and see that all its business operations get a fair deal.

The inequities of government competition in the electric power field are so definitely explained by Mr. Moses that it would seem that every reader of this report should understand why a government power policy is so much needed.

—R. S. C.

WHAT OTHERS THINK

Notes on Recent Publications

Chicago White Paper. "Fourteen years of achievement" with Mayor Kelly of Chicago, 1933-1946. Mayor Kelly's "report to the people" takes Chicago through its post-World War I period of depression, crime, and near-bankruptcy to recent wartime accomplishment, victory, and postwar adjustment via the "Century of Progress" exposition, "the mayor's psychological attack on the depression." The greater part of the report is devoted to the functions and activities of the mayor, city officials, departments, and bureaus. Profusely illustrated, it is a "picture of the Chicago of yesterday, today, and tomorrow." Twenty-two pages are allotted to the department of subways and the Chicago Transit Authority (1945-). An additional 24 pages give a detailed view of Chicago's water supply system. CHICAGO'S REPORT TO THE PEOPLE, 1933-1946. City of Chicago, March, 1947. 372 pages, 340 photographs.

All-pervasive TVA. The numerous activities of the Tennessee Valley Authority are covered in considerable detail in an annual report of 245 pages. Eight of the pages are devoted to appropriate illustrations including a diagram of the Tennessee river giving the distances between installations and their elevation above sea level. Starting with the reconversion to peace the myriad possibilities of the valley are extolled and the present state of development indicated. The greater portion of the report consists of financial statements and appendices containing statistical tables, power contracts, and agreements. 13TH ANNUAL REPORT. Board of Directors, TVA for fiscal year beginning July 1, 1945, ending June 30, 1946. U. S. Government Printing Office, Washington 25, D. C.

Regional Resources Planning Board. "A study in public administration." Representatives of seven southern universities and the Tennessee Valley Authority convened for the purpose of studying problems of governmental administration. This group supports the view that "while some problems may be solved locally—most require a regional approach." The conference decided to select an important public problem "of more than local interest" for joint study, and chose the administration of natural resources in the South. South Carolina's contribution to the program considers its soil, forests, minerals, wild life, and scenery. Not an inventory, the study is concerned with the activities of government in these fields. When the other state studies are complete TVA will compile a regional summary. SOUTH CAROLINA'S NATURAL RESOURCES. By Christian L. Larsen. University of South Carolina Press, Columbia, South Carolina. 212 pages, with tables and charts.

Interior's Power Empire. The U. S. Interior Department's major concern remains the production and distribution of electric power. (Analysis of the department's annual report for the fiscal year 1945 appeared in PUBLIC UTILITIES FORTNIGHTLY, Vol. XXXVII, No. 7, pages 440-445, March 28, 1946.) Intertwined throughout and concentrated in the first portion of the current annual report is omnipotent hydroelectric power. A detailed case is presented on behalf of the Bureau of Reclamation's completed and proposed projects. Anticipated obstacles facing its ambitious power program are outlined. The major problem foreseen is "the coördinated development" of our river basins: the Columbia, Missouri, Colorado, and the Central Valley of California.

Expansion of Interior's hydroelectric system is indicated in a table showing production of 3,000,000,000 kilowatt hours in 1940, to 14,000,000,000 in 1946. Production goal set for 1960 is 55,000,000,000 kilowatt hours.

Department policy is frankly stated: "The Department of the Interior has taken the position that the various acts of Congress affecting public power lay upon it an obligation to get low-cost energy to the whole region, with a preference to public bodies." The department "sees no . . . conflict with the private utilities in the distribution field." (For pertinent comment on this subject see: "It Is Not in the Cards," by F. McLaughlin, president of Puget Sound Power & Light Company, PUBLIC UTILITIES FORTNIGHTLY, Vol. XXXIX, No. 12, page 738, June 5, 1947.)

Reclamation's far-reaching plans are explicitly defined as: "development of additional sources of electric power and construction of transmission lines required to bring such power to market. . . . Utilization of the potential power of multipurpose projects is of necessity an integral part of postwar program. . . . The program is one of great magnitude. . . ." NATURAL RESOURCES PROBLEMS. Annual report of the Secretary of the Interior, J. A. Krug (for the fiscal year ending June 30, 1946). U. S. Government Printing Office, Washington 25, D. C. 442 pages, special maps and tables.

The Fickle Element. Light-bearing phosphorus has its source in the phosphate rock deposits formed by the fossil remains of minute animals. First discovered in 1669 it is produced today by a furnace requiring over 10,000 kilowatts, or sufficient electricity to supply 320,000 homes. An interesting insight into the production of phosphorus is presented by an illustrated 20-page booklet. PHOSPHORUS, THE LIGHT BEARER. Monsanto Chemical Company, St. Louis, Missouri.

The March of Events

In General

Power Shortage Rumors Untrue

CHARLES E. OAKES, president of Edison Electric Institute, has characterized as unwarranted and untrue rumors of an impending widespread shortage of electric power in the United States.

"Although the early postwar growth of demand for electricity has exceeded expectations, and has narrowed the industry's margin of spare and reserve capacity," Mr. Oakes said, "all customer demands will be met in 1947 and in the years following.

"The utility industry's tremendous construction program which was started immediately following VJ-Day, with an unprecedented total of more than 11,000,000 kilowatts to be installed over the next four years, is now beginning to show results."

About 2,000,000 more kilowatts of capacity will be added during the remainder of this year to the present total of 40,500,000 kilowatts now in service in electric company generating stations. Another 3,450,000 kilowatts will be installed by these companies in 1948, 3,700,000 kilowatts in 1949, and some 2,000,000 kilowatts in 1950.

FPC Jurisdiction Dropped In Independent Sales

THE Federal Power Commission, on August 15th, adopted an order withdrawing from all jurisdiction over independent operators who produce or gather natural gas.

Its action, the commission said (culminating a long controversy over its right to control sales by such operators to interstate pipe-line companies) is intended "to relieve any existing uncertainty" that it seeks such jurisdiction.

"It seemed evident that a formal administrative rule was necessary," the statement went on, "to affirm our belief that it was the intent of Congress to exempt such independent producers and gatherers when it enacted the Natural Gas Act in 1938."

The amendment to the commission's general rules exempts sales of independent operators made at "arm's length"—that is, where there is no business affiliation between buyer and seller.

Commissioner Claude L. Draper dissented from the action of the commission.

Opposes Tidelands Decision

GOVERNOR Beauford Jester of Texas asked the Interstate Oil Compact Commission, meeting in Great Falls, Montana, early this month, to oppose vigorously the recent Supreme Court decision in the California tidelands case.

Approximately 250 delegates attended the compact commission's sessions, including Governors Jester, Sam C. Ford of Montana, and Frank Carlson of Kansas.

"I urge that we go on record, by duly adopted resolution, in opposition to the super-Federal powers announced for the first time in the California case and in favor of congressional action to renounce such powers in favor of the state," Governor Jester said.

Speaking on the second day of the compact commission's meeting, the Texas governor declared that the June 23rd Supreme Court decision giving the Federal government right to resources

of submerged land, was "a potent weapon for proponents of the nationalization of the entire oil and gas industry as well as other industries."

After reviewing the suit, Governor Jester declared: "The new legal theories of state-Federal relations . . . are something that will haunt every sovereign state in the future if it is not nullified by appropriate congressional action. The court pronounced an entirely new legal theory of a paramount Federal right to take oil and natural resources, without regard to whether the Federal government actually owns the soil.

"This is the greatest of all usurpations of state rights by the Federal government," Jester asserted. "It is in line with the trend that must be stopped if we are going to continue as a union of states instead of a highly centralized Federal state."

Alabama

Maps Construction Program

ALABAMA POWER COMPANY, in the next five years, plans to spend $50,000,000 for new generating plants and for extensions in the company's service area.

President Thomas W. Martin made that disclosure in commenting on a report of the Edison Electric Institute that electric light and power companies will spend $5,000,000,000 in the next five years.

"A new 120,000-kilowatt steam plant already is under construction at Gadsden," Mr. Martin said.

"Lines are being extended to serve new customers as fast as materials can be received. More than 31,000 new customers were connected in the past twelve months."

Connecticut

Rate Increase Unjustified

STATE Attorney General William L. Hadden does not believe that Connecticut utility companies will be justified in asking for rate increases if they are compelled to pay the new 3 per cent state sales and use tax on purchases made by them.

Five utility companies—the Connecticut Light & Power Company, Hartford Gas Company, United Illuminating Company of New Haven, Bridgeport Hydraulic Company, and Southern New England Telephone Company — have filed suit in superior court seeking exemption from payment of this new tax.

In their joint writ, filed by Attorney Lawrence A. Howard of Hartford, the companies maintained that if they had to pay the taxes they would be compelled to ask for rate increases sooner or later. Mr. Hadden disagreed with this statement.

Georgia

Gets Bus Fare Boost

THE Columbus Transportation Company has been authorized by the public service commission to increase its rates for a 6-month trial period beginning September 1st.

The increase, slightly under that asked by the company, provides for the sale of

4 tokens for 25 cents, free transfers, 5-cent school children's fare, and a 10-cent cash fare.

In its ruling, the commission justified the increase on the basis of higher costs and overhead and declared that the company was getting a 4½ per cent return on its present 5-cent fare and 1-cent transfer fee. This, the commission declared, was inadequate. However, it ordered a reëxamination of the transportation company's income immediately following the six months' trial period to determine whether or not the increase shall be continued.

May Sell Transit Unit

ACCORDING to the *Atlanta Constitution* the Georgia Power Company may take steps soon to divest itself of its $20,000,000 Atlanta Transportation System.

The system which operates streetcars, busses, and trackless trolleys now carries 140,000,000 passengers a year.

This action seems to have been aggravated further when a board of arbitration made a decision boosting the wage of top transportation operators from $1.07 an hour to $1.24 an hour, an increase which followed a hike last year from approximately 90 cents an hour to $1.07 an hour.

Shortly after the decision of the board was made known, Preston S. Arkwright, president of Georgia Power, announced he would ask the public service commission for an increase in rates.

Kansas

Gas Output Cut

THE Kansas State Corporation Commission has issued a drastic order shutting in 92 gas wells in the Hugoton field for alleged illegal overproduction in violation of its order.

Most extensively affected was the Republic Natural Gas Company, which was ordered to shut down 63 of its 155 wells in the field until the current monthly allowables caught up with the overproduction. Commission lawyers estimated this would require five months in the case of some wells.

The order is deemed to be the most far-reaching ever made by the commission in respect to the Hugoton field. It means that each well at which the monthly allowable production has been disregarded must be locked up until subsequent monthly allowables equal the amount of gas overproduced.

To Get Gas Refunds

THIRTY-SEVEN thousand residents, or former residents, of Topeka are to be eligible for refunds for overcharges by Cities Service Gas Company on gas bills between September 1, 1943, and April 30, 1947.

All regular domestic and commercial consumers of gas during the period are to receive refunds. This excludes industrial and special users.

A proposed plan for distributing refunds has been filed with the tenth circuit court of appeals in Denver by James E. Smith, Topeka attorney, who has been named special master to handle disbursements.

Massachusetts

Elevated Deal Rapped

A REPORT of State Auditor Thomas J. Buckley to Governor Robert F. Bradford, included some criticism of the recent legislation passed by the Massachusetts legislature authorizing purchase of the Boston Elevated Railway properties. Buckley's report claimed that the

new law which set up the Metropolitan Transit Authority, headed by Chairman Carroll Meins, had been hastily enacted. The state auditor's report questioned sale of outstanding private securities in the property to the authority on the basis of $85 a share when such securities, it was claimed, recently sold in the open market at a lesser figure. Official sources indicate, however, that the acquisition of the Boston Elevated properties by the Metropolitan Authority is going to go ahead as planned and as scheduled.

Missouri

Fare Raise Granted

THE Missouri Public Service Commission has authorized St. Louis Public Service Company to raise the price on four of its regular streetcar and bus passes. The following "temporary or experimental" hikes for passes were approved:

Regular weekly pass from $1.25 to $1.50; weekly express bus pass from $1.50 to $1.75; weekly shopper-theater pass from 75 cents to $1; and Sunday-holiday pass from 25 to 30 cents.

No increase was asked for in the regular 10-cent cash fare or for the price of tokens, 4 for 35 cents, and they will remain as they are.

Franchise Invalid

DAVID M. PROCTOR, Kansas City counselor, has issued a legal opinion that the Kansas City Public Service Company's 1937 franchise to operate busses in Kansas City is invalid because it deprives the city of the right to require the new bus service or extensions by the company of present service.

Councilman Paul G. Koontz, chairman of the council public utilities committee, and other members of the council were to discuss the matter.

The question of the city's rights under the franchise arose when a delegation of Waldo businessmen and civic leaders requested the council to join them in an effort to obtain a bus line on Seventy-fifth and Eighty-fifth streets.

In the 12-page opinion, Proctor stated that the city charter gives the city power to regulate and require public utilities to give reasonable new services and extension of services. However, the bus franchise provides for the company to initiate or request new services or extensions to be approved by the city manager.

Proctor said franchise was illegal also in that it delegated such power of approval to the city manager.

The city, Proctor said, could require the company to put in new services or extensions as long as they are reasonable and not confiscatory.

New Jersey

Stand on School Bus Changed

THE constitutional convention's committee on taxation and finance, by a vote of 6 to 4, reversed itself for a second time and adopted a constitutional proposal which will permit the legislature to provide for the free transportation of all school students up to eighteen years of age.

The committee had originally rejected by a 6-to-5 vote a proposal to place a similar clause in the main body of the Constitution. Later in July it reconsidered and agreed without opposition to offer this proposition as a separate proposal, which could be approved or voted down separately in November aside from the main vote on the whole Constitution.

As it now stands if the convention ac-

cepts the committee recommendations, the bus bill proposal will be tied in with the whole Constitution.

Strike Ban Proposed

AN amendment banning strikes or work stoppages by private employees in public utilities or public employees was advocated recently for inclusion in the state's new Constitution.

The ban against strikes by employees in public utilities was introduced by William J. Orchard, Essex county delegate. His proposed amendment to the Bill of Rights reads: "Publicly employed labor and privately employed labor in public utilities are prohibited from engaging in strikes or work stoppages."

New York

Gas Rates Increased

THE public service commission has granted Kings County Lighting Company a temporary increase in gas rates. Effective to June 30, 1948, the rates will mean an increase of 30 cents a month for consumers using 2,000 cubic feet of gas.

Under the increase approved by the commission the minimum charge of $1 a month with an allowance of 500 cubic feet of gas, is not increased. The next 2,600 cubic feet are increased from 95 cents a thousand feet to $1.15, so that a customer using 1,000 feet of gas monthly, or 500 feet in excess of the gas allowed in the monthly minimum schedule, will have an increase of 10 cents a month. The next consumption block of 6,800 cubic feet will be increased from 70 to 85 cents a 1,000 feet.

Gets Raise in Gas Rates

THE public service commission, maintaining that evidence shows operating costs in materials and wages of Brooklyn Borough Gas Company have increased, granted the utility a temporary increase in gas rates for a period to July 1, 1948, pending conclusion of the rate proceeding now in progress.

A company request for an increase in the minimum monthly charge was denied, but an increase of one cent per 100 cubic feet of gas in the various service classifications after the minimum was granted.

Oklahoma

Disagrees with Clyde Ellis, NRECA Manager

OKLAHOMA GAS & ELECTRIC COMPANY president, George A. Davis, struck back at Clyde Ellis, executive manager of the National Rural Electric Coöperative Association, who told a farm and home week delegation at Stillwater that private electric companies present a threat to the progress of rural electrification in Oklahoma and Arkansas.

"Ellis either does not have the facts or is dealing in deliberate demogogery when he infers that our company is trying in any way to impede that progress," Davis said.

"Our activities are and have been exerted for the encouragement of farm electrification, and this is best shown by the low wholesale rates we have made available since 1944 to the 14 REA coöperatives served by OG&E.

"These coöperatives paid us only slightly more than 6 mills per kilowatt hour during the past twelve months, and this compares favorably with the rates charged by the tax-free Tennessee Valley Authority.

"He admitted the Oklahoma rates are

low," Davis continued, "but he feared they would be raised if the Southwestern Power Administration was not permitted to develop. This is simple assumption in the thinking of Ellis. The SWPA had no bearing on our low farm wholesale rate, and whether or not the SWPA continued to exist or develop still will have no bearing on them. That's a matter to be decided upon mutually by the cooperatives, the corporation commission, and OG&E."

Pennsylvania

Gas May Be Piped Out of State, PUC Says

By a 3-to-2 vote the public utility commission took the first step toward permitting the widespread use of natural gas by consumers in Pennsylvania.

The commission approved the application of Manufacturers Light & Heat Company for construction of a $5,200,000 pipe line through Chester, Montgomery, Bucks, Lehigh, Northampton, Monroe, and Pike counties, and permission to serve customers in West Fall township, Pike county.

The line will be 125 miles long, running from Coatesville, Pennsylvania, to Port Jervis, New York. The order says that all gas carried through the 14-inch line would be sold to Home Gas Company of New York and that none would be used for consumers along the line.

Commission Chairman John Siggins, Jr., of Warren county and Commissioners B. Frank Morgal and John B. Conley voted for the extension. They maintained that construction of the new line would free the western Pennsylvania pipe-line network so that the Pittsburgh shortage area can receive more fuel.

Commissioners Harold A. Scragg and Henry Houck filed a strong dissent. They declared that it not only will deprive the Pittsburgh area of natural gas it needs badly but will do "serious injury" to the coal industry by introducing gas into new territory long accustomed to use coal.

To Fight Cab Fare Boost

The Pittsburgh city council has ordered City Solicitor Anne X. Alpern to start legal proceedings before the public utility commission in opposition to the Yellow Cab Company's request for an increase in rates.

The solicitor was directed to ask the PUC for a hearing to determine the "lawfulness" of the proposed rates, and to submit a request that the new rates not be put into effect pending the hearing and the decision by the commission.

The request for the increase was filed by the cab company on June 27th to become effective August 4th.

South Carolina

Urges Approval of Dam

S. C. McMeekin, president of South Carolina Electric & Gas Company, early in August dispatched an urgent appeal to the Federal Power Commission to approve the construction of a new dam and generating plant near Columbia. McMeekin warned that a long delay might lead to a curtailment of electric services in the Columbia area.

The company's application for a permit to build the new facility has been before the commission since late January. At that time it was estimated that it would cost $4,000,000. The expected average yearly generation of energy is 46,500,000 kilowatt hours.

At the same time that McMeekin sent his letter to the FPC he sent another to R. M. Jefferies, general manager of the

Santee-Cooper, calling Jefferies' attention to Santee-Cooper's recent failure to provide all the energy its contract with the Columbia company calls for.

Washington

To Seek Cut in Rates

LEADERS of various branches of the Seattle electrical industry, it was learned, will seek a 25 per cent slash in all forms of City Light residential rates, and outright repeal of a new rate for electrical home heating. Petitions will be circulated to obtain sufficient signatures to assure places on the ballot at the March, 1948, general municipal election, it was announced by Robert A. Yothers, attorney for the Electrical Heating Association and the Electrical Contractors' Association.

The 25 per cent rate reduction proposal will be embodied in an initiative measure. The heat rate repeal will be contained in a referendum.

Ordered to Make Reply

JOHN WYLIE, secretary of Skagit County Public Utility District, has been ordered by the state supreme court to answer a petition for rehearing of the Puget Sound Power-Skagit PUD Case.

To test legality of the proposed $135,000,000 sale of the Puget Sound Power & Light Company to the PUD, Wylie refused to sign necessary papers, and the PUD brought suit. The high court upheld Wylie, thus blocking the sale. The PUD appealed for a rehearing.

Wisconsin

Rate Reductions Clarified

WISCONSIN has met the problem of how to make reductions in retail gas rates, retroactive to the date the utility received reduced wholesale rates, by passing an act giving the commission that power.

This problem has arisen as a result of numerous FPC orders requiring substantial reductions in the wholesale rates for natural gas, and the lag under normal state commission rate procedures, in passing these savings along to ultimate consumers.

The importance of the matter was forcefully brought to the attention of the National Association of Railroad and Utilities Commissioners at the 1946 convention in Los Angeles.

It was questioned in Wisconsin whether the state commission could adequately deal with the situation under existing statutes. This led to the enactment of the new law, Chapter 419, Laws of 1947. This statute reads as follows:

> 196.645 REDUCTION IN RATES; RETROACTIVE EFFECT. If the rates of any public utility shall be based upon the cost of any energy, commodity, or service furnished by (to) said utility which is in turn furnished or distributed by said utility to the public served by it, and the charges for which are regulated by any authority of the Federal government, and such charges are changed by such Federal authority, the commission upon complaint or upon its own motion may proceed to investigate and determine whether the utility's rates shall be changed by reason of the change in the cost of energy, commodity, or service resulting from the change in charges as prescribed by such Federal authority; and any such change in rates by the commission may be made effective as of the effective date of the order of the Federal authority prescribing such change in charges. In any such case, notwithstanding the provisions of §§ 196.62 and 196.63, the commission may determine and require payment by the utility to its customers of any sums which it may have received from them subsequent to such effective date of its said order in excess of the rates so prescribed by the commission.

The Latest Utility Rulings

Bankruptcy Rules Inapplicable to Reorganization of Solvent Holding Company

THE Federal District Court approved a plan for simplification of Interstate Power Company and Ogden Corporation. The plan provided, among other things, that Interstate, an electric utility as well as a holding company, would reduce its debt, eliminate its preferred stock, create a new common stock with an equity in assets and earnings.

The Securities and Exchange Commission had instituted the court proceedings to enforce the plan. A preferred stockholder challenged the commission power to institute the proceeding, since, it was argued, it lacked jurisdiction to impose a reorganization on an operating utility company. The court rejected this point, particularly since the electric company was also a holding company.

It was contended that the plan was not fair and equitable to debenture holders since it violated the absolute priority rule and it did not compensate them for loss of their creditor position. This argument was dismissed on the ground that rulings from insolvency cases may not be apposite in all § 11(e) proceedings, and, especially, in the case of a solvent holding company. Judge Leahy said:

> I have always thought that it serves no useful purpose, but rather merely tends to confuse the issues to cite cases in the bankruptcy sense, involving the full priority rule, to support certain arguments in cases involving attempts to comply with the Public Utility Holding Company Act, where insolvency is seldom present. Where insolvency is not present the judicial techniques, at least, which should be utilized to see whether the senior securities are given their equitable equivalents and whether junior securities should participate at all, are different.

It was further noted that the court could evaluate the fairness of the plan even in the absence of a commission determination as to whether the preferred stock had a present value. The court held that, while such a determination is necessary where insolvency is present, it is not necessary in § 11(e) proceedings involving a solvent holding company. It was further observed:

> Again I reëmphasize that in bankruptcy situations whether of actual insolvency or in the bankruptcy sense of inability to meet debt charges as they fall due, such reorganizations are concerned first, last, and at all times with strict adherence to the "absolute priority rule," which simply means you are concerned with present values of securities to insure that the senior securities receive the equitable equivalent of that which they are asked to surrender, based on their matured claims.

Re Interstate Power Co. et al. 71 F Supp 164.

Reproduction Cost Prevails over Low Purchase Price

AN order of the Ohio commission fixing gas rates has been upheld by the Ohio Supreme Court on an appeal by the city of Marietta. The principal objec-

tion raised by the city was the fixing of a rate base equal to reproduction cost less depreciation, but the court held that value for rate making is properly measured by reproduction cost under Ohio law.

The River Gas Company, which serves Marietta, acquired its properties from an affiliate. When the properties were taken over, the books of the affiliate showed that on assets of $763,000 there was an accumulated depreciation reserve of $685,000. The utility company purchased the properties for $82,527.53.

The city did not specifically claim that the purchase price represented the true value, but it contended that the extra value had been paid for by consumers in previous depreciation reserves. The court replied:

> The answer to this claim is that these excessive depreciation reserves were taken before River became the owner of the property and River cannot now be penalized for this practice by its predecessors in title. Its property must be valued as of a date certain and cannot be reduced so as to require a confiscatory present rate of return.

Referring to the use of reproduction cost, the court noted that for a number of years after the Public Utility Act was adopted municipalities generally acquiesced in the interpretation given to the act by the court, to the effect that it provided for valuation by the reproduction cost new less depreciation method. The utilities then challenged that interpretation in numerous cases. Now, owing to higher cost prices, said the court, the municipalities are disposed to challenge this method of valuation.

But, it said, if the original interpretation was sound, it still remains so, even though economic conditions have changed in the meantime. If the statute has become outmoded, the remedy must be attained through the legislative branch of the government and not in the courts. *City of Marietta v. Ohio Public Utilities Commission.*

Court Refuses to Pass on Question of Rate Discrimination

THE owner of a multitenanted apartment house sued an electric company because of rate classifications applying to apartment houses. He contended that there was unlawful discrimination with respect to submetering of current. A New York court dismissed his complaint.

The customer, said the court, has no right at common law to sue for such relief because the statute creating the commission was intended to supersede all common law remedies. That statute, giving the commission power over rates, was intended to cover the whole subject of rates.

Nor does the customer have any vested right to utility service or to any particular rate, said the court, except to the extent that the Public Service Law grants him such a right. He is not entitled to invoke his constitutional guaranties of due process or equal protection under such circumstances.

Classifications and rate schedules for utility service, the court continued, are, when filed with the commission, presumed to be reasonable. They must be attacked in the first instance before the commission. Questions of unreasonableness and discrimination are not for the courts. *Ten Ten Lincoln Place, Inc. v. Consolidated Edison Co. of New York, Inc.*

Percentage Added to Plant Investment To Reflect Higher Costs

THE New Mexico Commission authorized increased rates for a company engaged in the distribution and sale of liquefied petroleum gas. These rates

should produce a return of between 6½ per cent and 7½ per cent on the rate base, after allowance of 3.43 per cent for depreciation.

The rate base was determined by taking the cost of gas plant in service, deducting existing depreciation, and adding 5 per cent of the original cost "as allowance for reproduction cost." Allowance was made for working capital equal to one-eighth of operating expenses, in addition to materials and supplies, prepayments, and petty cash allowance. *Re Sacramento Corp. (Case No. 186).*

Court Asserts Power to Review Basis for Rates

WHEN the Supreme Court, in Federal Power Commission *v* Hope Natural Gas Co. (1944) 320 US 591, 51 PUR (NS) 193, ruled that the result reached, not the method employed, is controlling on review of a rate order, it opened the way for controversy as to how great a restriction has been placed on reviewing courts. The United States Court of Appeals for the District of Columbia, in denying a rehearing in the Mississippi River Fuel Corporation Case (referred to in PUBLIC UTILITIES FORTNIGHTLY, July 3, 1947, page 59) discusses this question.

The subject was the allocation of costs to ascertain what costs pertained to business regulated by the Federal Power Commission. The commission argued that a reviewing court is limited to a consideration of the "end result," the rate or price prescribed by the final rate order for the commodity or service. It said that, when the court finds this rate fair and reasonable, its function is exhausted. Upon that premise the commission, according to the court, seemed to contend that a court has no power to examine the composition of the prescribed rate or the several elements which together constitute the rate. Judge Prettyman, speaking for the court, said:

> The danger of misunderstanding and confusion arises because the commission's premise stems from a trite and true generality. It is true that if the rate prescribed by the commission be fair, reasonable, and nonconfiscatory, a court cannot disturb it. The questions are: When is a rate fair, reasonable, and nonconfiscatory? And how does a court determine whether the rate is so or not? The commission seems to contend that the court must examine the rate *per se*, as an abstraction, or as a naked economic fact, divorced from the elements of which it is composed and regardless of its effects; and if it appears fair and reasonable upon such examination, it must stand. Such contention is without merit, either upon reason or upon authority, and moreover is impossible of practice.

The character of a rate, he said, is not an abstract economic concept of the proper price. Neither a company, commission, or court can fix a price by an abstract observation or by a comparative evaluation of current prices for other commodities or services. The character of the rate is determined by its relation to a number of components, such as expenses of operation, depreciation, or depletion, and a proper return. The "end result" is the ability of the rate to meet the sum of the costs required.

It follows, he continued, that a court can review the fairness, reasonableness, and nonconfiscatory character of a rate only by reviewing the propriety of the elements of which the rate is composed. "No other way is known to our law or ever was followed by any authority so far as we know."

When the courts examine the allocation of costs, they are examining the end result of the prescribed rate, because one phase of the end result is that the rate must yield enough revenue to meet all proper expenses. A contention that a reviewing court has no power to inquire into a challenged refusal to include certain expenses in the computation of a prescribed rate is, it was said, without merit. The commission said that nowhere, in its opinion, did the court say that the resulting rates were unreasonable, unfair, or confiscatory. Judge Prettyman answered that a rate order which does not provide for proper allowable expenses,

taxes, depreciation, and return is unfair, unreasonable, and confiscatory, and the court thought it unnecessary to recite that obvious basic premise. *Mississippi River Fuel Corp. v. Federal Power Commission et al.*

Race Track News Telephone Service Discontinued

A COMPLAINT by a subscriber against a telephone company's action in discontinuing service upon receiving notice from state authorities that the service was being used to violate the law was dismissed by the Missouri commission.

A company regulation on file with the commission authorizing discontinuance under such circumstances was described as having the same effect as law and as binding upon the utility, the public, and the commission.

To a charge made by the subscriber that the rule was unreasonable, arbitrary, oppressive, and unjust, the commission replied:

> In so far as the complainant's attack on said rule and regulation is concerned, we must rule against the complainant. Said rule operates to relieve the regulated company from being placed in the dilemma of choosing either the course of continuing service under threat of criminal prosecution as an accessory, if the complainant is actually guilty of a crime, or discontinuing service under the threat of civil liability in the event the accusations are wrongfully made by the enforcement officers.

The commission overruled the argument that the regulation was discriminatory with the statement that, since it operates uniformly as to all members of the public availing themselves of the company's service, it could hardly be called discriminatory.

The subscriber was using his telephone to disseminate news concerning horse racing, such as prerace odds, scratches, track conditions, the outcome of races, final odds, and similar information. His testimony was somewhat evasive.

He said that bookmakers could make use of his service; that he didn't know any of his customers; that he didn't know who was paying $50 or more a week for his service; that he didn't know for certain that any bookmaker used his service. The commission commented on his testimony in these words:

> If we were to believe complainant's testimony in its entirety, we would be compelled to declare his business lawful, but we are not so gullible as to believe that a business of this kind conducted for profit could or would be conducted in the manner described by complainant, with no knowledge of his customers nor the uses which they were making of the service. We think the evidence clearly establishes that the bookmakers in Kansas City were using the telephonic news service of complainant as a necessary adjunct to their unlawful business.

The commission found that there was a substantial basis in fact for the notice given to the company by law enforcement officials and that the company had a right to rely on the notice and discontinue service. *Partnoy v. Southwestern Bell Telephone Co. (Case No. 11,031).*

Motor Carrier Partly under State Control

THE Ohio commission, after determining that a motor carrier service being operated by a railroad was under its jurisdiction, ordered that the carrier obtain a certificate of convenience and necessity or cease operation.

The commission conceded that it lacked jurisdiction over certain phases of the operation such as pickup and delivery of shipments which were moving in interstate commerce or purely municipal traffic. Intrastate transportation in unincorporated territory, however, remained within the jurisdiction of the state commission.

A contention by the carrier that it was not a public utility because it limited its service to the railroad was overruled. The

fact that the carrier held itself ready to serve any railroad in the territory made it apparent that its classification as a public utility was not improper.

The commission, in finding that the exercise of jurisdiction would not burden interstate commerce ruled:

> We are of the opinion and find that regulation of intrastate transportation, the exercise of the Ohio commission of the powers of taxation granted to it, and the requirement that a certificate of public convenience and necessity be secured for the use of public highways, for the transportation of intrastate shipments, will not burden interstate commerce or interfere with the free flow of interstate transportation. To sustain the contention of respondents would permit the use of Ohio highways by carrier performing interstate service without authority or regulation in intrastate transportation.

Re Motor Terminals, Incorporated (I. and S. No. 180).

Proceeding before Civil Aeronautics Board Stayed

An air carrier's appeal to the United States Court of Appeals for the District of Columbia from a refusal by the Civil Aeronautics Board to permit intervention in a hearing on a rival carrier's application for authority to operate between Los Angeles and Honolulu resulted in the issuance of an order staying further action.

The carrier had applied for permission to intervene in the certificate proceeding. The board had denied the application on the ground that the filing was not timely. The carrier then appealed to the court, relying on evidence which was not before the board that its delay was due to an order from another Federal department that it hold itself available for wartime service.

The court in remanding the matter of intervention to the board pointed out that it could consider only what was in the record and that, consequently, only by reconsideration could an equitable decision be made based on all the facts.

To preserve the status quo during the rehearing the court ordered the board to refrain from any action until the right of the carrier to intervene had been decided. *Pacific Overseas Airlines Corp. v. Civil Aeronautics Board et al. 161 F2d 633.*

Higher Rate beyond City Line

The Wisconsin commission authorized a municipal water plant to add to the rate charged to general consumers outside the city 25 per cent above the urban rate, to cover fire protection service. About 32 per cent of the total cost of service within the city was allocable to fire protection.

Within the city this cost was not included, either separately or otherwise, in rates applicable to general consumers, but was levied as a direct charge against the city. Through its power of taxation the city was reimbursed for the cost to it of fire protection service furnished by the water utility. The commission said:

> The furnishing of water to suburban users necessarily includes some element of fire protection service for which no separate compensation is received. It is, therefore, proper that there be included in the rate for general service a differential to cover the costs incurred by the utility in maintaining water service at an adequate pressure to fight fires, and for other additional costs incurred in furnishing service in suburban areas.

Re City of Clintonville (2-U-2314).

Foreign Air Carrier Operation Authorized

In considering an application by a Canadian air carrier for a foreign carrier permit the Civil Aeronautics Board pointed out that § 1102 of the Civil Aero-

nautics Act, which requires the board to carry out its duties in a manner consistent with any obligation assumed by the United States in any treaty, convention, or agreement in force with a foreign country, does not relieve the board from its obligation to find that a proposed service is required by the public interest and that the carrier is fit to render service.

The board approved the application when it appeared that the new service would be over a well-populated route in an important industrial section and that the carrier was well equipped to serve in a competent manner. *Re Trans-Canada Air Lines (Docket No. 2945).*

Other Important Rulings

THE Securities and Exchange Commission made no adverse findings as to a plan filed by a service company and parent holding company which was to be placed in operation for employees of both companies, pursuant to a condition previously imposed by the commission that any pension plan set up by the service company be first submitted for approval. *Re Electric Bond & Share Co. et al. (File No. 70-614, Release No. 7477).*

The supreme court of New Mexico affirmed a judgment denying an injunction to an electric coöperative restraining a municipality from acquiring electric facilities in areas beyond its corporate limits, where a coöperative had prior rights, since the coöperative had no plant or transmission lines and the contract for their construction had never been let and the municipality had not contracted for such purchase, there could be no irreparable damages so essential to support a right to injunctive relief. It was noted that the mere fact that the municipality would be engaging in an act beyond its authority did not alone entitle the coöperative to complain. *Sierra Electric Coöperative v. Hot Springs, 180 P2d 244.*

The Pennsylvania commission refused to issue a subpoena *duces tecum* to an applicant for authority to amend his operating rights to examine into the financial worth of the applicant and the success of his operations, since the success of such operations under the present certificate would not of itself justify the grant or refusal of the proposed amendment of his certificate. *Re Greisinger (Application Docket No. 66541, F.1, Am—A).*

The supreme court of Texas held that the commission now has power to authorize a railroad to discontinue passenger service where that service does not and cannot reasonably be made to pay, by reason of a statutory amendment requiring daily passenger service, Sundays excepted, but authorizing relaxation of such requirements by the commission. *Texas & N. O. R. Co. v. Railroad Commission, 200 SW2d 626.*

The supreme court of Oklahoma held that the commission lacks authority to require a telephone company serving a municipality and adjoining rural territories to construct facilities for, and to furnish at a loss or without profit, the same exchange service to a rural area not previously served by it, when that area is getting service from another company and both companies object to the commission's action. *Nicoma Park Telephone Co. et al. v. State et al.*

The California commission, in determining the need for a proposed motor carrier service, considered the growth and development of the area to be served, the need for the proposed service, the character of the service afforded by existing carriers, and the scope of service offered by the applicant. *Re Reader Truck Lines (Decision No. 39666, Application No. 26544).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

PREPRINTS

OF CASES TO APPEAR IN

Public Utilities Reports

COMPRISING THE MORE IMPORTANT DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 69 PUR(NS) NUMBER 3

Points of Special Interest

SUBJECT	PAGE
Consideration of reorganization plan after its remand	65
Directors' participation in corporate reorganization	65
Management trading in corporate stock	65
Authorization of motor carrier competition	75
Proof of both convenience and necessity	75
Helicopter mail and express service	77
Restrictions on duration of helicopter certificate	77
Commission jurisdiction over natural gas producing and gathering	85
Student commutation fares for veterans	91
Purchase price for sale to affiliate	95

Titles and Index

TITLES

Cambridge Electric Light Co., Re ..... (SEC) 95
Chenery Corp., Securities and Exchange Commission v. ..... (USSupCt) 65
Federal Water & Gas Corp., Securities and Exchange Commission v. ..... (USSupCt) 65
Fin-Ker Oil & Gas Production Co., Re ..... (FPC) 85
Fleming, Re ..... (Mass) 91
Los Angeles Helicopter Case, Re ..... (CAB) 77
Mason City Motor Coach Co., Re ..... (Iowa) 75

INDEX

Appeal and review—effect of remand on future Commission action, 65; remand of reorganization order, 65.

Certificates of convenience and necessity—helicopter service, 77; motor carriers, 75; proof of both convenience and necessity, 75; restriction on duration of certificate, 77; rival applications, 77.

Consolidation, merger, and sale—purchase price, 95; transaction between affiliates, 95.

Corporations—management trading in corporation stocks, 65; participation by officers and directors in reorganization, 65.

Discrimination—rate exceptions for veterans, 91; student commutation fares, 91.

Gas—jurisdiction of Federal Commission, 85; natural gas producing and gathering company, 85.

Monopoly and competition—motor carrier competition, 75.

UNITED STATES SUPREME COURT

Securities and Exchange Commission

v.

Chenery Corporation et al.

No. 81

Securities and Exchange Commission

v.

Federal Water & Gas Corporation

No. 82
— US —, 91 L ed —, 67 S Ct 1575
June 23, 1947

REVIEW *of decision of circuit court of appeals reversing order of Securities and Exchange Commission which denied participation by officers and directors on a parity with other stockholders in a reorganization plan; reversed. For earlier decisions in this case, see (1946) 80 US App DC 365, 62 PUR NS 299; 154 F2d 6; (1943) 318 US 80, 87 L ed 626, 47 PUR NS 15, 63 S Ct 454; (1942) 75 US App DC 374, 44 PUR NS 138, 128 F2d 303. For Commission decisions, see (1941) 8 SEC 893, 41 PUR NS 321; (1941) 10 SEC 200, 41 PUR NS 361.*

Appeal and review, § 70 — Remand of reorganization order — Effect on future Commission action.

1. The Commission, in passing upon an application for approval of a holding company reorganization plan, after the case has been remanded to it because its first order denying participation by management on a parity with other stockholders was based upon legal precedents which did not sustain it, properly considered afresh whether the plan was consistent with the standards of §§ 7 and 11 of the Holding Company Act, p. 68.

Corporations, § 22 — Reorganization — Participation — Officers and directors — Dealing in corporation stocks.

2. The absence of a general rule or regulation governing management trading in the corporation stocks during reorganization does not affect the Commission's duties in relation to the proposed reorganization plan, and the fact that its action might have a retroactive effect is not necessarily fatal to its validity, p. 68.

Appeal and review, § 15 — Commission order — Scope of review.

3. The scope of review of an administrative order wherein a new principle is announced and applied is no different from that which pertains to ordinary administrative action, since the wisdom of the principle adopted is no concern of the court, p. 73.

Appeal and review, § 28.9 — Order of Securities and Exchange Commission — Holding company reorganization.

4. The appellate court, in reviewing an order of the Securities and Exchange Commission relating to reorganization of a holding company, may not disturb the Commission's conclusion unless it lacks rational and statutory foundation, where the facts are undisputed, p. 73.

Appeal and review, § 28.9 — Securities and Exchange Commission order — Holding company reorganization.

5. The very breadth of the language of the Holding Company Act precludes a reversal of the Securities and Exchange Commission's judgment with respect to a holding company reorganization plan except where the Commission has plainly abused its discretion, p. 73.

Corporations, § 22 — Reorganization — Participation — Officers and directors — Dealing in corporation stocks.

6. There is a reasonable basis for a judgment that the benefits and profits accruing to the management of a holding company from stock purchases during reorganization should be prohibited regardless of the good faith involved, and it is a judgment that can justifiably be reached in terms of fairness and equitableness, to the end that the interests of the public, the investors, and the consumers might be protected, but it is also a judgment based upon public policy which Congress has indicated is of the type for the Securities and Exchange Commission to make, p. 74.

(FRANKFURTER and JACKSON, JJ., dissent.)

APPEARANCES: Roger S. Foster, Philadelphia, Pa., for petitioners; Spencer Gordon, Washington. D. C., for Chenery Corporation and others; Allen S. Hubbard, New York city, for Federal Water & Gas Corp.

Mr. Justice MURPHY delivered the opinion of the court: This case is here for the second time. In Securities and Exchange Commission v. Chenery Corp. (1943) 318 US 80, 87 L ed 626, 47 PUR NS 15, 63 S Ct 454, we held that an order of the Securities and Exchange Commission could not be sustained on the grounds upon which that agency acted. We therefore directed that the case be remanded to the Commission for such further proceedings as might be appropriate. On remand, the Commission reëxamined the problem, recast its rationale, and reached the same result. The issue now is whether the Commission's action is proper in light of the principles established in our prior decision.

When the case was first here, we emphasized a simple but fundamental rule of administrative law. That rule is to the effect that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inade-

quate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis. To do so would propel the court into the domain which Congress has set aside exclusively for the administrative agency.

We also emphasized in our prior decision an important corollary of the foregoing rule. If the administrative action is to be tested by the basis upon which it purports to rest, that basis must be set forth with such clarity as to be understandable. It will not do for a court to be compelled to guess at the theory underlying the agency's action; nor can a court be expected to chisel that which must be precise from what the agency has left vague and indecisive. In other words, "We must know what a decision means before the duty becomes ours to say whether it is right or wrong." United States v. Chicago, M. St. P. & P. R. Co. (1935) 294 US 499, 511, 79 L ed 1023, 55 S Ct 462, 467.

Applying this rule and its corollary, the Court was unable to sustain the Commission's original action. The Commission had been dealing with the reorganization of the Federal Water Service Corporation (Federal), a holding company registered under the Public Utility Holding Company Act of 1935, 49 Stat. 803, 15 USCA §§ 79 et seq. During the period when successive reorganization plans proposed by the management were before the Commission, the officers, directors, and controlling stockholders of Federal purchased a substantial amount of Federal's preferred stock on the over-the-counter market. Under the fourth reorganization plan, this preferred stock was to be converted into common stock of a new corporation; on the basis of the purchases of preferred stock, the management would have received more than 10 per cent of this new common stock. It was frankly admitted that the management's purpose in buying the preferred stock was to protect its interest in the new company. It was also plain that there was no fraud or lack of disclosure in making these purchases.

But the Commission would not approve the fourth plan so long as the preferred stock purchased by the management was to be treated on a parity with the other preferred stock. It felt that the officers and directors of a holding company in process of reorganization under the act were fiduciaries and were under a duty not to trade in the securities of that company during the reorganization period. Re Federal Water Service Corp. (1941) 8 SEC 893, 915–921, 41 PUR NS 321. And so the plan was amended to provide that the preferred stock acquired by the management, unlike that held by others, was not to be converted into the new common stock; instead, it was to be surrendered at cost plus dividends accumulated since the purchase dates. As amended, the plan was approved by the Commission over the management's objections. Re Federal Water Service Corp. (1941) 10 SEC 200, 41 PUR NS 361.

The court interpreted the Commission's order approving this amended plan as grounded solely upon judicial authority. The Commission appeared to have treated the preferred stock acquired by the management in accord-

ance with what it thought were standards theretofore recognized by courts. If it intended to create new standards growing out of its experience in effectuating the legislative policy, it failed to express itself with sufficient clarity and precision to be so understood. Hence the order was judged by the only standards clearly invoked by the Commission. On that basis, the order could not stand. The opinion pointed out that courts do not impose upon officers and directors of a corporation any fiduciary duty to its stockholders which precludes them, merely because they are officers and directors, from buying and selling the corporation's stock. Nor was it felt that the cases upon which the Commission relied established any principles of law or equity which in themselves would be sufficient to justify this order.

The opinion further noted that neither Congress nor the Commission had promulgated any general rule proscribing such action as the purchase of preferred stock by Federal's management. And the only judge-made rule of equity which might have justified the Commission's order related to fraud or mismanagement of the reorganization by the officers and directors, matters which were admittedly absent in this situation.

After the case was remanded to the Commission, Federal Water and Gas Corp. (Federal Water), the surviving corporation under the reorganization plan, made an application for approval of an amendment to the plan to provide for the issuance of new common stock of the reorganized company. This stock was to be distributed to the members of Federal's management on the basis of the shares of the old preferred stock which they had acquired during the period of reorganization, thereby placing them in the same position as the public holders of the old preferred stock. The intervening members of Federal's management joined in this request. The Commission denied the application in an order issued on February 7, 1945, Holding Company Act Release No. 5584. That order was reversed by the court of appeals (1946) 80 US App DC 365, 62 PUR NS 299, 154 F2d 6, which felt that our prior decision precluded such action by the Commission.

The latest order of the Commission definitely avoids the fatal error of relying on judicial precedents which do not sustain it. This time, after a thorough reëxamination of the problem in light of the purposes and standards of the Holding Company Act, the Commission has concluded that the proposed transaction is inconsistent with the standards of §§ 7 and 11 of the act, 15 USCA §§ 79g, 79k. It has drawn heavily upon its accumulated experience in dealing with utility reorganizations. And it has expressed its reasons with a clarity and thoroughness that admit of no doubt as to the underlying basis of its order.

[1, 2] The argument is pressed upon us, however, that the Commission was foreclosed from taking such a step following our prior decision. It is said that, in the absence of findings of conscious wrongdoing on the part of Federal's management, the Commission could not determine by an order in this particular case that it was inconsistent with the statutory standards to permit Federal's management to real-

ize a profit through the reorganization purchases. All that it could do was to enter an order allowing an amendment to the plan so that the proposed transaction could be consummated. Under this view, the Commission would be free only to promulgate a general rule outlawing such profits in future utility reorganizations; but such a rule would have to be prospective in nature and have no retroactive effect upon the instant situation.

We reject this contention, for it grows out of a misapprehension of our prior decision and of the Commission's statutory duties. We held no more and no less than that the Commission's first order was unsupportable for the reasons supplied by that agency. But when the case left this court, the problem whether Federal's management should be treated equally with other preferred stockholders still lacked a final and complete answer. It was clear that the Commission could not give a negative answer by resort to prior judicial declarations. And it was also clear that the Commission was not bound by settled judicial precedents in a situation of this nature. *Supra,* 318 US at p. 89, 47 PUR NS at p. 21. Still unsettled, however, was the answer the Commission might give were it to bring to bear on the facts the proper administrative and statutory considerations, a function which belongs exclusively to the Commission in the first instance. The administrative process had taken an erroneous rather than a final turn. Hence, we carefully refrained from expressing any views as to the propriety of an order rooted in the proper and revelant considerations. See Siegel Co. v. Federal Trade Commission (1946) 327 US 608, 613, 614, 90 L ed 888, 66 S Ct 758, 760.

When the case was directed to be remanded to the Commission for such further proceedings as might be appropriate, it was with the thought that the Commission would give full effect to its duties in harmony with the views we had expressed. Ford Motor Co. v. National Labor Relations Board (1939) 305 US 364, 374, 83 L ed 221, 59 S Ct 301; Federal Radio Commission v. Nelson Bros. Bond & Mortg. Co. 289 US 266, 278, 77 L ed 1166, PUR1933D 465, 53 S Ct 627, 89 ALR 406. This obviously meant something more than the entry of a perfunctory order giving parity treatment to the management holdings of preferred stock. The fact that the Commission had committed a legal error in its first disposition of the case certainly gave Federal's management no vested right to receive the benefits of such an order. See Federal Communications Commission v. Pottsville Broadcasting Co. (1940) 309 US 134, 145, 84 L ed 656, 33 PUR NS 75, 60 S Ct 437. After the remand was made, therefore, the Commission was bound to deal with the problem afresh, performing the function delegated to it by Congress. It was again charged with the duty of measuring the proposed treatment of the management's preferred stock holdings by relevant and proper standards. Only in that way could the legislative policies embodied in the act be effectuated.

The absence of a general rule or regulation governing management trading during reorganization did not affect the Commission's duties in re-

lation to the particular proposal before it. The Commission was asked to grant or deny effectiveness to a proposed amendment to Federal's reorganization plan whereby the management would be accorded parity treatment on its holdings. It could do that only in the form of an order, entered after a due consideration of the particular facts in light of the relevant and proper standards. That was true regardless of whether those standards previously had been spelled out in a general rule or regulation. Indeed, if the Commission rightly felt that the proposed amendment was inconsistent with those standards, an order giving effect to the amendment merely because there was no general rule or regulation covering the matter would be unjustified.

It is true that our prior decision explicitly recognized the possibility that the Commission might have promulgated a general rule dealing with this problem under its statutory rule-making powers, in which case the issue for our consideration would have been entirely different from that which did confront us. *Supra,* 318 US at pp. 92, 93, 47 PUR NS at p. 23. But we did not mean to imply thereby that the failure of the Commission to anticipate this problem and to promulgate a general rule withdrew all power from that agency to perform its statutory duty in this case. To hold that the Commission had no alternative in this proceeding but to approve the proposed transaction, while formulating any general rules it might desire for use in future cases of this nature, would be to stultify the administrative process. That we refuse to do.

Since the Commission, unlike a court, does have the ability to make new law prospectively through the exercise of its rule-making powers, it has less reason to rely upon ad hoc adjudication to formulate new standards of conduct within the framework of the Holding Company Act. The function of filling in the interstices of the act should be performed, as much as possible, through this quasi legislative promulgation of rules to be applied in the future. But any rigid requirement to that effect would make the administrative process inflexible and incapable of dealing with many of the specialized problems which arise. See Report of the Attorney General's Committee on Administrative Procedure in Government Agencies, S. Doc. No. 8, 77th Cong., 1st Sess. p. 29. Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity.

In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience wth a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized

and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards. And the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. See Columbia Broadcasting System v. United States (1942) 316 US 407, 421, 86 L ed 1563, 44 PUR NS 411, 62 S Ct 1194.

Hence we refuse to say that the Commission, which had not previously been confronted with the problem of management trading during reorganization, was forbidden from utilizing this particular proceeding for announcing and applying a new standard of conduct. Cf. Federal Trade Commission v. R. F. Keppel & Bro. (1934) 291 US 304, 78 L ed 814, 54 S Ct 423. That such action might have a retroactive effect was not necessarily fatal to its validity. Every case of first impression has a retroactive effect, whether the new principle is announced by a court or by an administrative agency. But such retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles. If that mischief is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law. See Addison v. Holly Hill Fruit Products Co. (1944) 322 US 607, 620, 88 L ed 1488, 64 S Ct 1215, 1222, 153 ALR 1007.

And so in this case, the fact that the Commission's order might retroactively prevent Federal's management from securing the profits and control which were the objects of the preferred stock purchases may well be outweighed by the dangers inherent in such purchases from the statutory standpoint. If that is true, the argument of retroactivity becomes nothing more than a claim that the Commission lacks power to enforce the standards of the act in this proceeding. Such a claim deserves rejection.

The problem in this case thus resolves itself into a determination of whether the Commission's action in denying effectiveness to the proposed amendment to the Federal reorganization plan can be justified on the basis upon which it clearly rests. As we have noted, the Commission avoided placing its sole reliance on inapplicable judicial precedents. Rather it has derived its conclusions from the particular facts in the case, its general experience in reorganization matters and its informed view of statutory requirements. It is those matters which are the guide for our review.

The Commission concluded that it could not find that the reorganization plan, if amended as proposed, would be "fair and equitable to the persons affected thereby" within the meaning of § 11(e) of the act, under which the reorganization was taking place. Its view was that the amended plan would involve the issuance of securities on terms "detrimental to the public interest and the interest of investors" contrary to §§ 7(d)(6) and 7(e), and would result in an "unfair or in-

equitable distribution of voting power" among the Federal security holders within the meaning of § 7(e). It was led to this result "not by proof that the interveners [Federal's management] committed acts of conscious wrongdoing but by the character of the conflicting interests created by the interveners' program of stock purchases carried out while plans for reorganization were under consideration."

The Commission noted that Federal's management controlled a large multistate utility system and that its influence permeated down to the lowest tier of operating companies. The financial, operational, and accounting policies of the parent and its subsidiaries were therefore under the management's strict control. The broad range of business judgments vested in Federal's management multiplied opportunities for affecting the market price of Federal's outstanding securities and made the exercise of judgment on any matter a subject of greatest significance to investors. Added to these normal managerial powers, the Commission pointed out that a holding company management obtains special powers in the course of a voluntary reorganization under § 11(e) of the Holding Company Act. The management represents the stockholders in such a reorganization, initiates the proceeding, draws up and files the plan, and can file amendments thereto at any time. These additional powers may introduce conflicts between the management's normal interests and its responsibilities to the various classes of stockholders which it represents in the reorganization. Moreover, because of its representative status, the management has special opportunities to obtain advance information of the attitude of the Commission.

Drawing upon its experience, the Commission indicated that all these normal and special powers of the holding company management during the course of a § 11(e) reorganization placed in the management's command "a formidable battery of devices that would enable it, if it should choose to use them selfishly, to affect in material degree the ultimate allocation of new securities among the various existing classes, to influence the market for its own gain, and to manipulate or obstruct the reorganization required by the mandate of the statute." In that setting, the Commission felt that a management program of stock purchase would give rise to the temptation and the opportunity to shape the reorganization proceeding so as to encourage public selling on the market at low prices. No management could engage in such a program without raising serious questions as to whether its personal interests had not opposed its duties "to exercise disinterested judgment in matters pertaining to subsidiaries' accounting, budgetary and dividend policies, to present publicly an unprejudiced financial picture of the enterprise, and to effectuate a fair and feasible plan expeditiously."

The Commission further felt that its answer should be the same even where proof of intentional wrongdoing on the management's part is lacking. Assuming a conflict of interests, the Commission thought that the absence of actual misconduct is immaterial; injury to the public investors and to the corporation may result just as readily. "Questionable transactions may be explained away, and an abuse of investors and

the administrative process may be perpetrated without evil intent, yet the injury will remain." Moreover, the Commission was of the view that the delays and the difficulties involved in probing the mental processes and personal integrity of corporate officials do not warrant any distinction on the basis of evil intent, the plain fact being "that an absence of unfairness or detriment in cases of this sort would be practically impossible to establish by proof."

Turning to the facts in this case, the Commission noted the salient fact that the primary object of Federal's management in buying the preferred stock was admittedly to obtain the voting power that was accruing to that stock through the reorganization and to profit from the investment therein. That stock had been purchased in the market at prices that were depressed in relation to what the management anticipated would be, and what in fact was, the earning and asset value of its reorganization equivalent. The Commission admitted that the good faith and personal integrity of this management were not in qeustion; but as to the management's justification of its motives, the Commission concluded that it was merely trying to "deny that they made selfish use of their powers during the period when their conflict of interest, vis-a-vis public investors, was in existence owing to their purchase program." Federal's management had thus placed itself in a position where it was "peculiarly susceptible to temptation to conduct the reorganization for personal gain rather than the public good" and where its desire to make advantageous purchases of stock could have an important influence, even though subconsciously, upon many of the decisions to be made in the course of the reorganization. Accordingly, the Commission felt that all of its general considerations of the problem were applicable to this case.

[3–5] The scope of our review of an administrative order wherein a new principle is announced and applied is no different from that which pertains to ordinary administrative action. The wisdom of the principle adopted is none of our concern. See Board of Trade v. United States (1942) 314 US 534, 548, 86 L ed 432, 62 S Ct 366, 373. Our duty is at an end when it becomes evident that the Commission's action is based upon substantial evidence and is consistent with the authority granted by Congress. See National Broadcasting Co. v. United States (1943) 319 US 190, 224, 87 L ed 1344, 49 PUR NS 470, 63 S Ct 997, 1013.

We are unable to say in this case that the Commission erred in reaching the result it did. The facts being undisputed, we are free to disturb the the Commission's conclusion only if it lacks any rational and statutory foundation. In that connection, the Commission has made a thorough examination of the problem, utilizing statutory standards and its own accumulated experience with reorganization matters. In essence, it has made what we indicated in our prior opinion would be an informed, expert judgment on the problem. It has taken into account "those more subtle factors in the marketing of utility company securities that gave rise to the very grave evils which the Public Utility Holding Company Act of 1935 was designed to correct" and has relied upon the fact that

"Abuse of corporate position, influence, and access to information may raise questions so subtle that the law can deal with them effectively only by prohibitions not concerned with the fairness of a particular transaction." *Supra,* 318 US at p. 92, 47 PUR NS at pp. 22, 23.

Such factors may properly be considered by the Commission in determining whether to approve a plan of reorganization of a utility holding company, or an amendment to such a plan. The "fair and equitable" rule of § 11(e) and the standard of what is "detrimental to the public interest or the interest of investors or consumers" under § 7(d)(6) and § 7(e) were inserted by the framers of the act in order that the Commission might have broad powers to protect the various interests at stake. 318 US at pp. 90, 91, 47 PUR NS at pp. 21, 22. The application of those criteria, whether in the form of a particular order or a general regulation, necessarily requires the use of informed discretion by the Commission. The very breadth of the statutory language precludes a reversal of the Commission's judgment save where it has plainly abused its discretion in these matters. See United States v. Lowden (1939) 308 US 225, 84 L ed 208, 60 S Ct 248; Interstate Commerce Commission v. Railway Labor Executives Asso. (1942) 315 US 373, 86 L ed 904, 62 S Ct 717. Such an abuse is not present in this case.

[6] The purchase by a holding company management of that company's securities during the course of a reorganization may well be thought to be so fraught with danger as to warrant a denial of the benefits and profits accruing to the management. The possibility that such a stock purchase program will result in detriment to the public investors is not a fanciful one. *The influence that program may have* upon the important decisions to be made by the management during reorganization is not inconsequential. Since the officers and directors occupy fiduciary positions during this period, their actions are to be held to a higher standard than that imposed upon the general investing public. There is thus a reasonable basis for a value judgment that the benefits and profits accruing to the management from the stock purchases should be prohibited, regardless of the good faith involved. And it is a judgment that can justifiably be reached in terms of fairness and equitableness, to the end that the interests of the public, the investors and the consumers might be protected. But it is a judgment based upon public policy, a judgment which Congress has indicated is of the type for the Commission to made.

The Commission's conclusion here rests squarely in that area where administrative judgments are entitled to the greatest amount of weight by appellate courts. It is the product of administrative experience, appreciation of the complexities of the problem, realization of the statutory policies, and responsible treatment of the uncontested facts. It is the type of judgment which administrative agencies are best equipped to make and which justifies the use of the administrative process. See Republic Aviation Corp. v. National Labor Relations Board (1945) 324 US 793, 800, 89 L ed 1372, 65 S Ct 982, 986, 157 ALR 1081. Whether we agree or disagree with the result

reached, it is an allowable judgment which we cannot disturb.

Reversed.

Mr. Justice Burton concurs in the result.

The Chief Justice and Mr. Justice Douglas took no part in the consideration or decision of these cases.

Mr. Justice Frankfurter and Mr. Justice Jackson dissent, but there is not now opportunity for a response adequate to the issues raised by the court's opinion. These concern the rule of law in its application to the administrative process and the function of this court in reviewing administrative action. Accordingly, the detailed grounds for dissent will be filed in due course.

IOWA STATE COMMERCE COMMISSION

Re Mason City Motor Coach Company

Docket No. H-3817
April 21, 1947

APPLICATION *for a certificate to operate as a motor carrier of passengers; denied.*

Certificates of convenience and necessity, § 88 — Public interest — Motor carriers.

1. The Commission, before granting a certificate to a motor carrier, must find that public convenience and necessity will be promoted by the proposed service, p. 77.

Certificates of convenience and necessity, § 88 — Award to motor carrier — Proof of both convenience and necessity.

2. A bus operator, to establish eligibility for a motor carrier certificate, must show both public convenience *and* necessity for the proposed service, not mere convenience *or* necessity, p. 77.

Certificates of convenience and necessity, § 114 — Motor carrier service — Establishment of need.

3. The fact that it would be convenient to have several carriers operating over a route, or to be able to get on or off a bus nearer one's home, does not establish necessity for additional motor carrier service, p. 77.

Monopoly and competition, § 60 — Motor carriers — Adequacy of existing service.

4. An application for a certificate to operate as a motor carrier should be denied where the carrier serving the area is furnishing adequate service and is ready, willing, and able to furnish any additional service necessary to meet the reasonable needs of the area, p. 77.

APPEARANCES: F. A. Ontjes, Attorney at Law, Mason City, and J. E. Osborne, President, Mason City, for the applicant; Smith & Beck, Attorneys at Law, Mason City, by Earl Smith and C. F. Beck, for the Mason

City and Clear Lake Railroad Company—Objector.

By the COMMISSION: On January 28, 1947, the Mason City Motor Coach Company of Mason City, Iowa, filed with the Commission an application for a certificate of convenience and necessity to operate as a motor carrier of passengers by operating a bus service from the western limits of Mason City to the Belmont Radio Corporation, a distance of 2 miles on Iowa Highway 106.

The Commission fixed March 7, 1947, at 9:30 o'clock A. M. at the office of the Cerro Gordo county auditor as the time and place for public hearing on this application, and public notice thereof was given as provided by law.

At the time and place so fixed the case was called and appearances were entered as follows: [Same as above.]

At the hearing it was urged that Certificate No. 609 issued to the Mason City and Clear Lake Railroad Company authorized the carrying of passengers between the terminal points only, and did not authorize carrying of passengers to or from intermediate points.

The application of the Mason City and Clear Lake Railroad Company, Docket No. H-2544, was for a certificate of convenience and necessity between Clear Lake and Mason City and intermediate points and the order, dated December 11, 1936, directed the issuance of a certificate "as applied for." The decision and order in that case recite: "Applicant proposes to operate between Mason City and Clear Lake and to furnish service to several intermediate stations which are designated in its application as Clear Lake Junction, West Haven, Central Heights, Country Club, Calkins' Crossing, Emery, Moore's Crossing, and Baker's Crossing." . . .

"After having carefully considered this application the Commission is of the opinion and hereby finds that the establishment of the service proposed by the applicant will promote the public convenience and necessity. A certificate of convenience and necessity will, therefore, issue to applicant as applied for in this case."

The certificate as written describes the route as follows:

"Route No. 1. Mason City, Clear Lake, Cerro Gordo County, Iowa."

In order to make the certificate conform to the order, and to avoid any ambiguity as to the authority granted, the certificate has been amended and corrected so as to read:

"Route No. 1. Mason City, Clear Lake, Cerro Gordo County, Iowa, serving the following intermediate stations: Clear Lake Junction, West Haven, Central Heights, Country Club, Calkins' Crossing, Emery, Moore's Crossing, and Baker's Crossing."

It is also urged by the applicant herein that the Commission has not followed the well-established rule as to granting authority for duplicate routes, but has deviated therefrom.

During the war, because of the emergency and to permit transportation of war workers, this rule was relaxed somewhat, and in some instances authority was granted to new carriers to transport workers to plants engaged in war work, when the existing carriers did not have, and could not furnish, schedules that would accommodate such workers. Such a situation does not exist here. These

certificates were generally granted for the duration of the war and six months thereafter.

[1, 2] To authorize the granting of a certificate the Commission must find that public convenience and necessity will be promoted. The general rule as established by the courts is that there must be both public convenience *and* necessity, not convenience *or* necessity.

[3] Of course, it would be convenient to have several carriers, or to be able to get on or off a bus nearer home, but that does not establish necessity.

[4] After considering all the evidence and exhibits offered in the case, and the briefs filed by the counsel for the respective parties, and all matters within the knowledge of the Commission, we find that the existing certificate holder, Mason City and Clear Lake Railroad, is furnishing adequate service, and is ready, able, and willing to furnish additional service to meet the reasonable needs of the workers at this Belmont Plant when additional service is needed.

The Commission, therefore, finds that this application should be denied, and it is so *ordered*.

CIVIL AERONAUTICS BOARD

Re Los Angeles Helicopter Case

Docket Nos. 896, 1821
May 20, 1947

APPLICATIONS *of rival air carriers for authority to provide mail and express service with helicopter aircraft in Los Angeles metropolitan area; temporary certificate issued to one carrier.*

Certificates of convenience and necessity, § 101.2 — Air carrier — Mail service — Public need.

1. Public need exists for the authorization of mail collection by helicopter when it appears that such service would provide a means of eliminating surface delay in the air mail journey of incoming mail and greatly extend the geographical range within which next-day deliveries of outbound mail could be expected, p. 80.

Certificates of convenience and necessity, § 101.2 — Helicopter service — Cost factor.

2. Present high cost of helicopter operations should not deter the authorization of an experimental mail service, since a more economical helicopter may be anticipated in the future just as more economical conventional aircraft has been developed since the first air carrier service was authorized, p. 81.

Certificates of convenience and necessity, § 101.2 — Helicopter carrier service — Public convenience.

3. Public convenience requires an experimental service in which helicopters would be used for metropolitan air mail delivery and collection, where many benefits to the postal service would result both at the present time and in the future when this type aircraft may be further developed, p. 81.

Certificates of convenience and necessity, § 101.2 — Helicopter service — Need for flexibility.

4. The Commission, in granting an air carrier authority to operate an experimental helicopter service for the delivery and collection of mail, should take cognizance of the need for flexibility in such an operation in order to permit rapid and frequent changes as the service requires, p. 83.

Certificates of convenience and necessity, § 73 — Restrictions — Helicopter transport service — Duration of certificate.

5. A certificate of convenience and necessity for a helicopter transport service should be limited to a period of three years because of the experimental nature of the service, because the potential of the helicopter in commercial air transport is unknown, and because of the uncertain economic and public convenience factors involved in such a project, p. 83.

Certificates of convenience and necessity, § 90 — Helicopter carriers — Rival applications.

6. The Commission, in determining which of two equally qualified air carriers should be awarded a certificate to operate an experimental helicopter service, should take into consideration the fact that one carrier has no major operation planned other than the helicopter experiment, since such a carrier could conduct a much more enlightening experiment than one involved in many other complicated air operations, p. 83.

APPEARANCES: Cornelius H. Sullavan, Jr., for Southwest Airways Co.; W. C. Stone and Martin J. Burke, for Los Angeles Airways, Inc.; Frank J. Delany, Solicitor, Post Office Department; James K. Crimmins and Arthur P. Lawler, for Transcontinental & Western Air, Inc.; Hugh W. Darling, for Western Air Lines, Inc.; Glen B. Eastburn, for the Los Angeles Chamber of Commerce; Julian T. Cromelin, Public Counsel.

By the BOARD: This consolidated proceeding concerns the applications of Southwest Airways Company (Southwest), Docket No. 896, and Los Angeles Airways, Inc. (Los Angeles Airways), Docket No. 1821, for authority to provide mail and express service with helicopter aircraft in the Los Angeles metropolitan area.

Leave to intervene was granted to the Post Office Department, Transcontinental & Western Air, Inc., United Air Lines, Inc., and Western Air Lines, Inc. After due notice to the public and all interested parties, a public hearing was held at Los Angeles before examiner Ferdinand D. Moran whose report was duly served. Exceptions thereto and briefs in support thereof have been filed, and oral argument has been heard by the Board.

The applications here under consideration are governed by § 401 of the Civil Aeronautics Act of 1938, as amended, which provides in part that the Board shall issue a certificate of

public convenience and necessity authorizing the whole or any part of the transportation covered by the application if it finds that the applicant is fit, willing, and able to perform such transportation and to conform to the provisions of the act and to the rules, regulations, and requirements of the Board thereunder, and that such transportation is required by the public convenience and necessity. The fundamental principles considered in disposing of similar applications are set forth in our prior opinions[1] and need not be repeated here.

Embracing some 1,000 square miles Los Angeles is one of the largest built-up areas in the world. It is approximately the size of the state of Rhode Island, about half the size of Delaware, and fifteen times larger than the District of Columbia. It is the third largest city in the United States in point of population and has the greatest concentration of population west of Chicago. As the principal Pacific coast port, Los Angeles leads all other areas on the coast in both industrial and agricultural production and in generating rail, water, and air traffic. By comparison with other large cities, Los Angeles has a small downtown section. A major part of its business, trade, and population is centered in such separate communities as Hollywood, the Wilshire District, and West Los Angeles which have retained their original names and characteristics. No other American city embraces so many large distinctive satellite communities. The combined area is roughly circular in shape with a diameter from 30 to 40 miles.

Travel from one part of the area to another is generally by private automobile over ordinary thoroughfares with traffic zones at short intervals. Steam railways skirt the eastern and northern boundaries of the city, the main areas being served by a network of electric interurban lines. Motor bus lines operate in both urban and interurban traffic. Los Angeles, unlike most other large cities, has practically no high-speed arterial highways to connect its far-flung satellite communities and no public transportation comparable to the subways of New York and Philadelphia or the elevated railway of Chicago.

Southwest has applied for a temporary or permanent certificate authorizing scheduled air transportation to provide collection and distribution of mail and express over four linear routes totaling 155.6 miles radiating out of the Los Angeles municipal airport to 23 post offices in the area, together with a shuttle route extending 12 miles from the airport to the roof of the Post Office Terminal Annex building in downtown Los Angeles. Los Angeles Airways seeks a similar certificate authorizing service over four linear and one shuttle route totaling 235 miles, radiating from the Los Angeles Municipal Airport to 43 communities in the area.

Prior to the hearing, the Post Office Department, with the coöperation of the War Department, conducted an experimental helicopter mail service in the Los Angeles area. This experiment demonstrated to the Department the desirability of a temporary helicopter service for that area. As a re-

[1] Re Delta Air Corp. (1941) 2 CAB 447; Re Braniff Airways (1940) 2 CAB 353; Re Trans-Southern Airlines (1940) 2 CAB 250 and cases cited therein.

sult of experience gained, the Post Office Department recommends a temporary certificate authorizing scheduled air transportation to provide collections and deliveries of mail over 3 circular routes totaling approximately 200 miles radiating out of the Los Angeles Municipal Airport to 30 post offices in the Los Angeles area.

[1] Studies made by the Post Office Department demonstrate that present air transport facilities speed the journey of air mail to Los Angeles through intermediate stages but that in many instances the slowness of local surface transportation in that city to and from the airport detracts from or even destroys the benefits afforded by flights from distant cities. Mail moving between the airport and the post offices in the area goes first to the downtown Post Office Terminal Annex building and from there by surface transport to various stations for further distribution. Likewise, outbound mail from the area is funneled through these stations to the Terminal Annex for dispatch to the airport. Depending upon the distance the mail has to travel and available public surface transportation schedules, the time required for these operations varies from three to six hours or more. Distribution of mail from the airport would be impracticable since it would duplicate the functions of the Terminal Annex and involve additional time, help, and space.

Time saved in the distribution of air mail is of particular importance to Los Angeles by reason of the differences of one to three hours in Pacific Standard Time with the other time zones extending eastward across the country. Most of the air mail from points west of the Mississippi arrives in the early morning but cannot go through the existing ground distributing system and reach its destination by the beginning of the business day. Afternoon deliveries can be made at many points but at numerous stations the mail is not delivered until the following morning. Mail coming from east of the Mississippi generally arrives at Los Angeles later in the day and does not reach its destination until the following day. By helicopter all of this inbound mail would be delivered the day its arrives. The major time savings in the transit of inbound mail would be effected by synchronizing the helicopter schedules with letter-carrier departures from the various post offices which at present precede the arrival of mail transported by surface carriers. In this way four and one-half to nineteen and one-half hours' transit time would be saved on weekdays and twenty-four hours over week ends and holidays. The time saved represents the delay which inbound air mail would otherwise suffer while awaiting letter-carrier departures for delivery to the addressee.

Points on the outskirts of Los Angeles have little or no prospect that their outbound air mail, dispatched in the normal course of business, will be delivered the following day in cities east of the Mississippi. Mail collection by helicopter would provide a means of eliminating surface delay in the air mail journey and greatly extend the geographical range within which next-day deliveries of outbound mail could be expected.

The Post Office Department takes the position that its proposed circular routes offer advantages which would

not be afforded by the linear routes proposed by the applicants and that maximum efficiency would be achieved in initial operations. It contends that its routes and schedules are designed better to make specific morning and afternoon letter-carrier deliveries and to make collections of mail in the evening for dispatch to the airport. In support of its proposal the Department submitted an exhibit to show that, on the basis of 3 trips daily according to mileage, volume of mail generated, and the class and total offices to be served, its routes would provide a more practicable operation than the linear route operations proposed by either Southwest or Los Angeles Airways. The proposals of both applicants were presented with a view to rendering maximum service to the Post Office Department. It was conceded that since the Department has the primary information relating to the needs of the postal service, and will be the principal user of the service, and will bear a major share of the cost of the operation, its recommendations should be followed as to the routes which will best serve the public interest.

A count of incoming pieces of air mail conducted by the Post Office Department on July 16 and 17, 1946, showed that a total daily average of 69,394 pieces are dispatched from points on its proposed route system. Of this potential volume the Department estimated that 20.94 per cent, or a daily average of 14,529 pieces, could be expedited by helicopter service.

By reason of the difference between the Army helicopters used in the experiment conducted by the Post Office Department and those contemplated for the service proposed herein, and the fact that all facilities and the services of personnel were gratuitous, the experiment furnished no information from which the Department could estimate costs of operation of its proposed routes. It stated that it would rely upon the applicants for such information and at its request the record was held open to receive supplemental cost estimates from both applicants. Southwest estimated that its capital requirements would be $259,750, with operating expenses totaling 90.87 cents per mile, or $210,820 a year. Los Angeles Airways projected its capital requirements at $221,000, with operating expenses aggregating 90.99 cents per mile, or $226,831 annually. These estimates appear to be reasonably accurate on the basis of information now available.

Compared with the cost of present airline operations by means of conventional aircraft, the cost of operating the helicopter appears to be disproportionately high. The Post Office Department maintains, however, that the primary consideration which should determine public convenience and necessity for the proposed service is its value to the postal service in expediting the movement of mail. It expects that the establishment of the service will greatly increase the volume of mail and asserts that while the cost per mile may be high, the total annual cost will be low from the standpoint of service rendered.

[2, 3] Rotary-wing aircraft are in a very early stage of development. During the war helicopters were used with considerable success for military purposes and at present they are being operated in a variety of commer-

cial enterprises. Exponents of this type of equipment are enthusiastic with respect to its future place in air transport, particularly in local or short-haul service. In the present proceeding the evidence is limited almost exclusively to the advantages of the helicopter as a means of expediting the movement of mail in the Los Angeles metropolitan area.

The Post Office Department supports authorization of the service on an experimental basis to permit evaluation of the use of the helicopter for scheduled transportation of air mail in a metropolitan area. We do not believe that its present high cost of operation alone should deter the experiment since a more economical helicopter may be anticipated just as more economical conventional aircraft have been developed. In view of the benefits which the helicopter is expected to offer to the postal service and the further development of this type of aircraft which may be anticipated, we conclude that the proposed experimental service is required by the public convenience and necessity.

Although the act prohibits the Board from limiting any air carrier in the type of equipment it may use, our award herein is made upon the assumption that the character of service proposed will require the use of rotary-wing aircraft.

Data of record covering the movement of express are wholly inadequate as a basis for projecting the potential volume of air express over the proposed helicopter routes. There was no showing other than the judgment figure of 100 pounds per flight at the rate of 10 cents per revenue mile submitted by Los Angeles Airways. Upon the basis of an analysis of air express shipments forwarded and received in Los Angeles, that carrier estimated monthly express revenue from its proposed operation at $3,220. While this figure cannot be regarded as indicative of air express service possibilities an appreciable amount of premium cargo may be developed by reason of the time advantages of the helicopter service over surface facilities. On the basis of the record made in this proceeding it is questionable whether the present helicopter, after allowance for fuel, can transport loads much in excess of those anticipated for handling mail alone. However, it is typical of all scheduled transportation that loads vary from schedule to schedule and we believe that the carriage of express is desirable not only from the standpoint of expediting its delivery with space which might otherwise remain unused, but as a source of revenue to help defray a part of the cost of the experiment to the government.

As pointed out heretofore, the Los Angeles area embraces 1,000 square miles and extends roughly from 30 to 40 miles in diameter. The maximum distance to be served by the type of operation visualized here would not exceed 50 miles from the center of the metropolitan area. The Post Office Department points out that its proposed routes represent its judgment for the present and urges certification of the service on an area basis to permit flexibility of operation without the necessity of formal proceedings every time a revision in service is desired. The examiner recognized that the conventional point-to-point certificate establishing a rigid route pattern would

hinder ultimate success of the experiment and recommended authorization of the service on an area basis.

[4] We recognize the desirability of flexibility in the operation proposed in this proceeding to permit rapid and frequent changes in the service rendered. We will therefore issue a certificate authorizing air transportation of property and mail over the routes recommended by the Post Office Department for initial operation, as hereinafter prescribed, and, in order to permit a maximum of flexibility, we will exercise our power under § 416 (b)(1) of the act, 49 USCA § 496 (b)(1) by granting an exemption to the carrier so that it may serve with rotary-wing aircraft any point within a radius of 50 miles from the Post Office Terminal Annex building in Los Angeles.[2] By reason of the limited extent and unusual circumstances affecting operation of this service, we believe that it would be clearly an undue burden on the carrier and contrary to the public interest to require the carrier in subsequent formal proceedings to obtain authority to serve new points or to vary its flight pattern every time the Post Office Department requests it.

The exemption order will contain a provision that the carrier shall at all times maintain with the Board a flight pattern showing the points currently served. Any changes in the initial flight pattern may be effected at any time by the carrier's filing with the Board an amendment thereto approved by the Post Office Department. Unless disapproved by the Board, operations may be conducted under such amended flight pattern.

[5] As heretofore indicated, the potential of the helicopter in commercial air transport is unknown and whether the service proposed can be maintained on an economically sound basis with substantial public benefit is a matter which can be established only by experience. For these reasons we find that the certificate to be issued herein should be limited to a period of three years.

[6] It is clear that only one experimental helicopter service is required in the Los Angeles area. Both Southwest and Los Angeles Airways expressed their willingness to operate the routes proposed by the Post Office Department, or any other type or combination of routes, and their applications are sufficiently broad to permit authorization of either one to conduct the service. It remains, therefore, for us to select the carrier which will be best fitted to provide the service.

Southwest and Los Angeles Airways have presented competent evidence to prove their citizenship and we find that each is a citizen within the meaning of § 1(13) of the act, 49 USCA § 401(13). The financial resources, aeronautical and executive experience of both applicants qualify them to meet the tests of fitness, willingness, and ability. There have been no substantial changes in the corporate structure of either applicant since the Board found them qualified by the standards of fitness, willingness, and

[2] Section 416(b)(1) authorizes the Board to exempt any air carrier or class of air carriers from the requirements of Title IV of the act, or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, if it finds that the enforcement thereof "is or would be an undue burden on such air carrier . . . by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier . . . and is not in the public interest."

ability in the West Coast Case.[3] The organizational planning and background of the officials of both companies leave no doubt that either is capable of conducting the service needed. Both carriers are thoroughly familiar with Los Angeles and have demonstrated unusual interest in the establishment of a local helicopter service in the area.

The fact that Southwest is presently certificated[4] is not a controlling factor in its favor since feeder operations are vastly different from the helicopter service envisaged here, which will be principally a pilot operation gauged to meet the needs of the postal service within a metropolitan area. Inasmuch as service of this type has never been performed before it will be subject to a pattern of flight rules and regulations which have yet to be promulgated.

Although Southwest plans a separate division for the helicopter operation, it would nevertheless be conducted by management which is already involved in an extensive experimental feeder service. The operating head of the company acknowledged that commencing the operation of route No. 76 was particularly complicated and stated that he expected the proposed helicopter service to be very complex. To award both a feeder and a helicopter operation to Southwest would be to place upon this company responsibility for conducting two experiments having unusual national significance. With so many different problems involved it is questionable whether either enterprise would develop its maximum potential if undertaken concurrently by one managerial group. At the time of the hearing Southwest had not inaugurated service over route No. 76 and we believe that Southwest should at this time concentrate on the development of its feeder system to establish the feasibility of that service.

Los Angeles Airways has no plans other than specializing in the strictly local helicopter operation encompassed by this proceeding and, with a principal and independent interest in the development of such a service in the Los Angeles area, it could with undivided attention devote all of its energies entirely to that end. As indicated by the Post Office Department's brief, operation of the helicopter service by Los Angeles Airways would afford the government a yardstick by which the economic feasibility of the service could be measured without segregation of its cost for the carriage of mail from another operation through complicated accounting procedures, as would be the case if conducted by Southwest. In view of the foregoing considerations we conclude that the comparative public interest requires the selection of Los Angeles Airways.

In accordance with the foregoing findings and conclusions and all the evidence of record we find:

(1) That a temporary certificate of public convenience and necessity should be issued to Los Angeles Airways, Inc., authorizing air transportation in the metropolitan area of Los Angeles, Calif., with respect to prop-

[3] West Coast Case (1946) 6 CAB 961.

[4] Southwest holds a temporary certificate of public convenience and necessity authorizing it to engage in air transportation of persons, property, and mail over route No. 76, totaling 1,181 miles between Los Angeles and Medford via certain intermediate points. West Coast Case, *supra*.

erty and mail for a period of three years, as follows: (a) Between the Los Angeles Municipal Airport and the Los Angeles Municipal Airport via South Gate, Montebello, Whittier, El Monte, Monrovia, Alhambra, Pasadena, Glendale, Burbank, North Hollywood, Van Nuys, Beverly Hills, and Culver City; (b) Between the Los Angeles Municipal Airport and the Los Angeles Municipal Airport via Torrance, Wilmington, San Pedro, Long Beach, Santa Ana, Orange, Anaheim, Fullerton, Norwalk, Downey, and Compton; (c) Between the Los Angeles Municipal Airport and the Los Angeles Municipal Airport via the Post Office Terminal Annex building, Station "S," Hollywood, Wilshire-La Brea Station, West Los Angeles, and Santa Monica;

(2) That Los Angeles Airways, Inc., is a citizen of the United States within the meaning of the act; and is fit, willing, and able properly to perform the air transportation herein authorized; and to conform to the provisions of the act, and to the rules, regulations, and requirements of the Board thereunder;

(3) That a temporary exemption order should be issued to Los Angeles Airways, Inc., exempting that carrier from the provisions of § 401 (a) of the act, 49 USCA § 481(a), and from the terms, conditions, and limitations of the aforesaid temporary certificate of public convenience and necessity so as to authorize that carrier to serve with rotary-wing aircraft any point within a radius of 50 miles from the Post Office Terminal Annex building in Los Angeles, Calif.; and

(4) That the application of Southwest Airways Company, Docket No. 896, and the application of Los Angeles Airways, Inc., Docket No. 1821, except to the extent that it is granted herein, should be denied.

Appropriate orders will be entered.

FEDERAL POWER COMMISSION

Re The Fin-Ker Oil & Gas Production Company

Docket No. G-352, Opinion No. 149
May 22, 1947

APPLICATION *for certificate under the "grandfather" clause § 7 of the Natural Gas Act; application dismissed for want of jurisdiction.*

Gas, § 2.1 — Jurisdiction of Federal Commission — Natural gas producing and gathering company.

An independent producer and gatherer of natural gas, which does not transport gas beyond the point where the gathering has been completed but sells

it at arm's length to a natural gas company which subsequently transports it and sells it in interstate commerce, and which is not otherwise subject to the jurisdiction of the Federal Power Commission, is not subject to Commission regulation under the Natural Gas Act.

By the COMMISSION: On May 8, 1942, The Fin-Ker Oil and Gas Production Company (Fin-Ker) filed with the Commission an application, thereafter amended on October 18, 1943, wherein the Commission was requested to find whether or not Fin-Ker was a natural gas company within the meaning of the Natural Gas Act, and, in the event the Commission found it to be a natural gas company, to issue to applicant a certificate of public convenience and necessity under the "Grandfather" clause of the amended § 7 of the act.[1]

On August 4, 1943, the Commission issued an order consolidating and setting for hearing with this proceeding certain other related matters,[2] and, among other things, instituting an investigation into the operating, contractual, financial, and other relationships between the companies named therein. A hearing was held pursuant to said order beginning on October 6, 1943.

On March 26, 1946, the Commission issued its order in Docket No. G-325, in which it found that The Tri-County Gas Company was a natural gas company within the meaning of the Natural Gas Act and issued to it a certificate of public convenience and necessity. On the same day, the Commission issued its order in Docket No. G-494, in which Kansas Natural Gas Inc. was found to be a natural gas company within the meaning of the Natural Gas Act and was ordered to file an application for a certificate of public convenience and necessity. On the same day, the Commission issued its order in Docket No. G-464, issuing to Kansas-Nebraska Natural Gas Company, Inc., a certificate of public convenience and necessity as requested in its application filed therein on June 11, 1943.

On April 25, 1946, the Tri-County Gas Company filed with the Commission an application for reconsideration of the order issued March 26, 1946, in Docket No. G-325, and on April 29, 1946, Kansas Natural Gas, Inc. filed a similar application in Docket No. G-494.[3] On May 21, 1946, the Commission issued orders in Docket Nos. G-325 and G-494, granting rehearings therein.

On November 1, 1946, in Docket No. G-806, Kansas-Nebraska Natural Gas Company, Inc., filed an application for a certificate of public convenience and necessity authorizing it to acquire and operate substantially all of the physical properties of The Tri-County Gas Company, together with a gas purchase contract between Fin-Ker and The Tri-County Gas Company.

On February 7, 1947, Kansas-Nebraska Natural Gas Company, Inc., in Docket No. G-856, filed an application for authority to acquire certain

[1] (1943) 3 FPC 1059.

[2] Docket No. G-325, Re Tri-County Gas Co.; Docket No. G-464, Re Kansas-Nebraska Nat. Gas Co.; Docket No. G-494, Re Kansas Nat. Gas Inc., *supra*, note 1.

[3] On May 6, 1947, the Commission, after reconsideration, issued an order vacating its order of March 26, 1946, and dismissing the applications of Tri-County for want of jurisdiction and concurrently with the adoption of this opinion and order took similar action respecting Kansas-Natural.

facilities constructed by Kansas Natural Gas, Inc., subsequent to the hearing held beginning October 6, 1943.

Pursuant to orders of the Commission of January 31, 1947, and February 13, 1947, Docket Nos. G-325, G-352, G-494, G-806, and G-856, were consolidated for hearing and a hearing was held therein commencing on March 4, 1947.[4] The several parties and the State Corporation Commission of Kansas, the only intervener in all of the dockets mentioned herein, appeared and oral and documentary evidence was introduced at the hearing.

Fin-Ker is a corporation organized under the laws of the state of Kansas and doing business only in that state. It owns or leases oil and gas acreage and mineral rights, covering approximately 50,128 acres in Finney and Kearny counties, Kansas, in the northern part of the Hugoton gas field. The gas sold by Fin-Ker is produced from a total of 44 gas wells owned and operated by it in the Hugoton field. Its natural gas operations are confined to production and gathering and the sale upon completion of gathering of such produced gas.

The natural gas produced from 41 of its wells is sold by Fin-Ker to Kansas-Nebraska and the gas from the remaining 3 wells is sold to Northern Natural Gas Company, both sales taking place at the termini of Fin-Ker's gathering lines. With respect to the gas sold to Northern Natural, it is clear from the record that such gas is distributed and sold by the latter company in communities situated entirely within the state of Kansas. Since the provisions of the Natural Gas Act do not apply to such sales, further consideration of this phase of Fin-Ker's operations is unnecessary.

Kansas-Nebraska is a natural gas company within the meaning of the Natural Gas Act [5] and substantially all of its gas supply in the Hugoton field is obtained by purchase from Fin-Ker. The gas so purchased from and delivered by Fin-Ker is transported by Kansas-Nebraska in interstate commerce through its own integrated pipeline system from the points of delivery in the Hugoton field to points in northern Kansas and southern Nebraska for ultimate public consumption in those states.

The gas produced from three of Fin-Ker's wells and sold by it to Kansas-Nebraska is delivered into a natural gas transmission line extending from Lakin, Kansas, approximately 18 miles east to the Holcomb, Kansas, compressor station of Kansas-Nebraska. This line was owned and operated by Tri-County prior to August 1, 1946, and was used for distribution by it of natural gas in the communities of Lakin, Deerfield, Hamlin, and Holcomb, Kansas, and for the gathering of natural gas from wells adjacent thereto. However, Kansas-Nebraska and Tri-County have executed a contract whereby Kansas-Nebraska as of August 1, 1946, will acquire the physical properties of Tri-County, including the pipe line just referred to.[6] The gas

[4] The record in this docket (G-352) was ordered reopened by the Commission in its order of January 31, 1947.

[5] Docket No. G-259, Re Kansas-Nebraska Nat. Gas Co. (1943) 3 FPC 966.

[6] In Docket No. G-806, consolidated herewith for purpose of hearing, Kansas-Nebraska requested authority to acquire and operate substantially all of the physical properties of Tri-County. On May 6, 1947, the Commission issued its order authorizing the acquisition of such of the facilities of Tri-County referred to therein as being subject to the jurisdiction of the Commission.

sold by Fin-Ker to Kansas-Nebraska from these 3 wells is sold delivered, and metered within the presently developed portion of the northern part of the Hugoton field in Kansas.

After the hearing in October, 1943, Kansas-Nebraska constructed, with the authority of this Commission, an 18-inch natural gas pipe line approximately 44 miles in length extending from its Scott City, Kansas, compressor station to a point in the Hugoton field about 4 miles southwest of Deerfield, Kansas.[7] Thereafter, Kansas Natural constructed a 16-inch pipe line approximately 6 miles in length interconnected with and extending from the southern terminus of that 18-inch line.[8] Thirty-eight of Fin-Ker's wells are interconnected with the 6-mile 16-inch pipe line, referred to above, by means of a number of small lines owned by Fin-Ker which extend in each instance from one or more of such wells generally in a direct route to the interconnection with the said 16-inch line and all deliveries of gas from the 38 wells are made and metered at the points of interconnection with said line.

The record discloses that Fin-Ker neither owns nor operates any transmission facilities of a character similar to those of an interstate pipe-line company. Further, there does not exist any corporate affiliation between Fin-Ker and Kansas-Nebraska and all contracts between the two companies have been made at arm's length. If Fin-Ker is to be found a "natural-gas company" within the purview of the Natural Gas Act, such a finding must be predicated solely upon those operations involving the sales to Kansas-Nebraska and the pipe-line deliveries incidental thereto.

Therefore, the particular issue presented is whether, under the provisions of the Natural Gas Act, the Commission has jurisdiction over Fin-Ker—an independent producer and gatherer—under circumstances which show that Fin-Ker does not transport gas beyond the points where the gathering has been completed, but sells such gas at arm's length to Kansas-Nebraska which subsequently transports and sells it in interstate commerce.

Section 1(b) of the National Gas Act, 15 USCA § 717(b), states that its provisions "shall apply" to the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale. However, the same section contains qualifying language to the effect that the provisions of the act "shall not apply" to the production or gathering of natural gas.

The question presented in this case was first reviewed by the Commission in Re Columbian Fuel Corp. 2 FPC 200, 208, 35 PUR NS 3, 10, decided in June 1940. There, where similar sales were made, we held, in declining to assume jurisdiction, that:

". . . it was not the intention of Congress to subject to regulation under the Natural Gas Act all persons whose only sales of natural gas in interstate commerce, as in this case, are made as an incident to and immediately upon completion of such person's production and gathering of said natural

[7] (1944) Docket No. G-525, 4 FPC 572.

[8] In Docket No. G-856, consolidated herewith for purpose of hearing, Kansas-Nebraska requests authority to acquire and operate the 16-inch line constructed by Kansas Natural. Concurrently with the adoption of this opinion and order, the Commission issued an order dismissing the application to acquire such pipe line for want of jurisdiction.

gas and who are not otherwise subject to the jurisdiction of this Commission."

At p. 207 of 2 FPC, at p. 10 of 35 PUR NS, we further held:

"The companies to be subjected to regulation were conceived of as 'pipe line' companies, and it was assumed that production and gathering would enter the field of regulation only to the extent that the 'pipe line' companies, either directly or through affiliates, controlled the production or gathering of the gas so transported.

"In making a choice between the broader and the narrower interpretation of its jurisdiction under the Natural Gas Act, in so far as the present respondent is concerned, the Commission is influenced by the above consideration. This consideration is reinforced by the fact that a determination in favor of the broader conception of its jurisdiction would lead the Commission into attempts to deal with the complicated interrelationship between the natural gas industry and the oil industry. To make regulation of producers and gatherers effective under these circumstances would require statutory authority of much wider scope and machinery exceeding that at the disposal of the Commission with its present limited appropriation."

We believe that this case is controlled by our ruling in the Columbian Fuel Case, *supra,* and that the sales of Fin-Ker are exempt under § 1(b) of the act, *supra.*

Two other cases in which the Commission made specific rulings on the question at issue here are Re Billings Gas Co. (1940) 2 FPC 288, 35 PUR NS 321, and Re Interstate Nat. Gas. Co. (1943) 3 FPC 416, 48 PUR NS 267; (1946) 65 PUR NS 1, 156 F2d 949. These cases, however, are clearly distinguishable from the instant case.

In the Billings Case, *supra,* one of the companies involved in that proceeding whose system operations were confined to a single state, was held to be a natural gas company because it engaged in the transportation of the gas subsequent to the completion of gathering and prior to the sale to its subsidiary. Fin-Ker engages in no such transportation and is not affiliated with the purchaser Kansas-Nebraska.

In the Interstate Case, *supra,* the operations of the company were wholly unlike those of applicant. In that case it was conceded that the company was a natural gas company within the meaning of the act by reason of its interstate operations and sales. Further, the Public Service Commission of Louisiana was held [9] to have no jurisdiction over the business of Interstate, including the sales in dispute, the court confirming the company's contention that about 99⅔ per cent of its total sales were sales in interstate commerce and beyond the reach of the Louisiana Commission. Here, the Kansas Commission has asserted the right to regulate certain of the activities of Fin-Ker and contends that we have no authority to regulate the sales made by it. In the Interstate Case, *supra,* there was evidence also of affiliation and of the unusual position occupied in the Monroe field in Louisiana by a group of companies including Interstate, who, together, own 77 per cent of the gas acreage in that field. As we said in the Columbian Fuel

[9] (1939) 33 PUR NS 193, 33 F Supp 50; (1940) 36 PUR NS 85, 34 F Supp 980. (See [La 1939] 27 PUR NS 145.)

Case, *supra*, 2 FPC at p. 208, 35 PUR NS at p. 10:

"Further experience with the administration of the Natural Gas Act may reveal that the initial sales of large quantities of natural gas which eventually flows in interstate commerce are by producing or gathering companies which, through affiliation, field agreement, or dominant position in a field, are able to maintain an unreasonable price despite the appearance of competition."

This case is distinguishable also from the Interstate Case, *supra*, in that in the latter case the Interstate Company purchases about half of its gas requirements from others in the Monroe field who make such sales to Interstate subsequent to the completion of gathering, so that, in effect, there is a second sale of the gas so purchased by Interstate.

We have, on several occasions [10] indicated quite clearly that the Commission has no desire to extend its jurisdiction over the independent producer and gatherer or otherwise invade what are properly regarded as the functions of the conservation authorities of the states. Further, the cases decided by the Commission do not reveal a single instance wherein we have sought to extend our jurisdiction in an unwarranted manner into those fields—so that any charge that we have or intend to invade such fields has been and is wholly unfounded.

Marshall Newcomb, general attorney for the Lone Star Gas Company, reached a similar conclusion in his recent article in the George Washington Law Review wherein he stated:

"It should be noted that the Commission has never, so far as any reported case reveals, departed from the precise ruling of the Columbian Case, *supra*. The writer has found no case in which it clearly appears that the Commission has fixed the price for gas sold and delivered to an interstate-pipe-line company immediately after the production and gathering operations were completed and before transportation in interstate commerce. On the contrary, the Commission has in many cases allowed the price paid by the pipe-line company for gas purchased at the wells and from the gathering lines of producers in fixing rates subject to its jurisdiction . . ." [11]

Consistent with former decisions and public statements of this Commission, we held that, where a person, not otherwise subject to the jurisdiction of the Commission, is engaged in production or gathering of natural gas exclusive of its transportation in interstate commerce and makes arm's-length sales and deliveries of natural gas in interstate commerce as an incident to or upon completion of that person's production or gathering, the provisions of the Natural Gas Act do not apply.

[10] Testimony of Chairman Smith and Commissioner Wimberly on April 29, 1947, at a hearing on S. 734, a bill to amend the Natural Gas Act, before a subcommittee of the Senate Committee on Interstate and Foreign Commerce.

Letter from Commission to Governor Andrew F. Schoeppel, chairman of the Interstate Oil Compact Commission, dated December 30, 1945, and letter of Commission to William R. Boyd, Jr., chairman of the Petroleum Industry War Council, dated July 21, 1945.

[11] Newcomb, Marshall, "Effects of Federal Regulation under the Natural Gas Act Upon the Production and Conservation of Natural Gas," The George Washington Law Review, Vol. 14, No. 1, December, 1945 pp. 217, 229.

The Commission, having considered the application and the record thereon, finds that:

The Fin-Ker Oil and Gas Production Company is not a natural gas company within the purview of the Natural Gas Act and its application should be dismissed for want of jurisdiction.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re Senator William D. Fleming

D. P. U. 7667
May 9, 1947

PETITION *for order directing railroad to make student commutation tickets available to student veterans; granted.*

Discrimination, § 85 — Student commutation fares — Age limit — Exception for veterans.

Student commutation tickets which, since their inauguration, were limited to students under twenty-one years of age should be available to veteran students over twenty-one attending educational institutions under the GI Bill of Rights, since these men were in service when they could have used these tickets and since nothing in the history of this special rate would prohibit its scope being extended beyond twenty-one year olds.

Revenues, § 2 — Basis for computation — Commutation tickets.

Statement that the cost of transporting veteran students should be calculated on an increment basis in estimating the effect which an extension of the student commutation tickets to veteran students would have on railroad revenues, if no additional cars would be required, p. 94.

By the DEPARTMENT: The above petition was filed with the Department on February 3, 1947, and a public hearing after due notice had been given, was held February 26, 1947.

This is a petition for the Department to order the railroad carriers (Boston and Albany Railroad, Boston and Maine Railroad and The New York, New Haven and Hartford Railroad) to make available the 46-ride intrastate pupils' monthly commutation tickets to veterans of World War II who are over twenty-one years of age and who are attending schools or institutions of learning under the provisions of what is known as the "GI Bill of Rights."

Boston and Albany Railroad tariff M.D.P.U. 1238, § No. 2–1–(B) states as follows:

(b) 46-Ride Intrastate Pupils' Monthly Commutation Tickets. Forty-six ride (continuous passage) pupils' monthly commutation tickets are good for one month and will be sold only between stations where the passage is wholly within the state of Massachusetts.

Pupils' tickets will be issued to pu-

pils who have not attained their twenty-first birthday, attending public schools, normal schools, parochial schools, industrial schools, technical schools, private schools, colleges, business school, special schools of music, theology, medicine, law and dentistry, and all schools where higher branches of education are taught. Such tickets shall be obtainable only upon presentation of a certificate (Form PTD–58) signed by the principal of the school and parent or guardian of the applicant, and which shall set forth that the applicant receives no pecuniary compensation for service to said school or its teachers, and that the ticket will be used solely for the purpose of travelling to and from school.

They are good for 46 continuous passages within the limit specified (they are not good for passage on Sundays nor for the checking of baggage), and are not transferable, and if presented by any other person than the one named thereon (whose signature must be affixed thereto,) and whose description is shown thereon, ticket will be taken up and forfeited.

Rules and regulations governing the sale of these tickets by the Boston and Maine Railroad and the New York, New Haven and Hartford Railroad are practically the same.

At the hearing the petitioner together with the parties favorable to the granting of this petition stressed the fact that these students, on account of their service in the armed forces, were deprived of the opportunity to receive or complete their education before they were twenty-one years of age.

No concrete or accurate data or evidence was offered as to how many of this class of students would be benefited by the granting of this petition. A tabulation compiled from the record of the hearing is shown below: The figures given as to the number of students that would be affected are estimates given at the hearing by the proponents of the petition. While these figures are only estimates they do show in a broad sense what the changes in rates might mean as to revenues involved, etc.

Miles	Station to Station		No.	Monthly Rate		Total Per Month	
				60-Ride	46-Ride	60-Ride	46-Ride
	Boston University (One Class Room)						
44.33	Worcester	—Boston	8	$21.20	$10.60	$169.60	$84.80
33.34	Milford	—Boston	1	16.75	8.35	16.75	8.65
27.62	Franklin	—Boston	1	15.70	7.85	15.70	7.85
55.98	New Bedford	—Boston	2	26.85	13.40	53.70	26.80
	General						
44.33	Worcester	—Boston	200	21.20	10.60	4,240.00	2,120.00
26.04	Lawrence	—Boston	200	15.25	7.60	3,050.00	1,520.00
31.59	Gloucester	—Boston	50	16.50	8.25	825.00	412.50
49.53	Fitchburg	—Boston	20	23.55	11.75	471.00	235.00
17.18	Hingham	—Boston	6	12.15	6.10	72.90	36.60
	No. Bennett Industrial School						
2.49	Brookline	—Boston	1	5.00	3.20	5.00	3.20
6.23	Revere	—Boston	3	7.00	3.50	21.00	10.50
26.04	Lawrence	—Boston	5	15.25	7.60	76.25	38.00
6.74	Melrose	—Boston	1	7.00	3.50	7.00	3.50
32.93	Haverhill	—Boston	2	16.65	8.30	33.30	16.60
12.10	Stoneham	—Boston	1	10.25	5.15	10.25	5.15
44.33	No. Oxford	—Boston	3	21.20	10.60	63.60	31.80

9.00	Winchester	—Boston	1	$7.60	$3.80	$7.60	$3.80
9.96	Woburn	—Boston	1	8.75	4.35	8.75	3.80
12.03	Reading	—Boston	1	9.75	4.85	29.25	14.55
6.34	Arlington	—Boston	2	7.00	3.50	14.00	7.00
13.49	Lynn	—Boston	3	9.75	4.85	29.25	14.55
11.74	Dedham	—Boston	1	9.75	4.85	9.85	4.85
28.45	Methuen	—Boston	4	15.95	7.95	63.80	31.80
25.55	Lowell	—Boston	2	15.25	7.60	30.50	15.20
35.76	Taunton	—Boston	1	16.90	8.45	16.90	8.45
100.83	W. Springfield	—Boston	1	52.55	26.30	52.55	26.30
37.27	Amesbury	—Boston	1	17.80	8.90	17.80	8.90
31.59	Gloucester	—Boston	1	16.50	8.25	16.50	8.25
34.62	Middleboro	—Boston	1	16.80	8.40	16.80	8.40
36.94	Clinton	—Boston	1	18.30	9.20	18.30	9.20
12.80	Swampscott	—Boston	1	10.25	5.15	10.25	5.15
64.65	Gardner	—Boston	1	30.70	15.30	30.70	15.30
27.34	Andover	—Boston	1	14.20	7.10	14.20	7.10
10.29	Auburndale	—Boston	1	9.25	4.65	9.25	4.65
16.32	Salem	—Boston	1	11.60	5.75	11.60	5.75
3.56	Somerville	—Boston	3	5.00	3.20	15.00	9.60
44.33	Worcester	—Boston	7	21.20	10.60	148.40	74.20
33.34	Milford	—Boston	1	16.75	8.35	16.75	8.35
6.42	Belmont	—Boston	1	7.00	3.50	7.00	3.50
115.38	Northampton	—Boston	1	54.90	27.45	54.90	27.45
55.98	New Bedford	—Boston	2	26.85	13.40	53.70	26.80
27.62	Franklin	—Boston	1	15.70	7.85	15.70	7.85
	Per Month		546			$9,830.75	$4,912.55
	Totals for 1 Year.....		6,563		$118,627.80		$49,560.40

The carriers at the hearing indicated their opposition to the granting of this petition at the same time expressing sympathy for the veterans. The economic forces over which the carriers have no control together with the limitations imposed by the statutes both state and Federal raised the question in their minds as to the legality of any order this Department could issue in enlarging the scope of these pupils' tickets. The carriers claimed that the rates for pupils' tickets are noncompensatory. One carrier stated that its entire commutation business was conducted at a loss and that it proposed to petition shortly for an increase in intrastate passenger fares.

All of the carriers contended that to extend the provisions of the pupils' tickets as petitioned for would cause them to be in violation of the statutes, and that these rates would be discriminatory against other persons over twenty-one years of age who may be attending schools but who are not classified as GI's, under the "GI Bill of Rights." This 46-ride pupils' ticket together with the 60-ride commutation ticket has been in use since 1912. The Board of Railroad Commissioners in their annual report for 1912 commented on the various orders issued by them during that year:

"At the present time there is no law requiring railroad corporations to issue tickets to any class of pupils for any reduction from the regular fares. Such tickets however as a matter of practice have been issued by the railroad companies between certain points on their lines but there has been a wide diversity in the rates, charges, and the classes of pupils who were eligible to receive them.

"It may be pointed out that pupils' tickets cannot be issued at reduced rates for interstate travel as such rates in the judgment of the Interstate Commerce Commission would be discrim-

inatory. The commonwealth, however, in the interest of public education, has required street and elevated railway companies under the provisions of Chap 567 of the Acts of 1910 to transport pupils of public day and public evening schools, of industrial and private schools at reduced rates. This statute has been interpreted and its constitutionality upheld in several judicial decisions. . . ."

The Railroad Commission in its order No. 9153 of December 5, 1912, recommended in part of this order as follows:

"Every such corporation shall also issue a monthly season ticket good for 46 rides which shall be available to pupils of the public day schools or public evening schools . . . upon the presentation of a certificate signed by the parent or guardian of such pupil and a teacher of the school for transportation between any two of such stations on the lines of such corporation. . . . The price of such tickets shall not exceed one-half of the price charged for the regular monthly 60-ride tickets. . . ."

From the above it appears that the recommendations of the Board were the outcome of various bills filed with the legislature to compel the carriers to provide these commutation rates. The practice of carrying students in intrastate transportation at half of the standard commutation fares has become a fixture of the carriers' passenger rate structure and there is no reason why it cannot be changed in scope whenever it is in the public interest to do so. The age of twenty-one as the limit of availability of the 46-ride ticket for students attending higher institutions of learning appears to have been arbitrarily determined.

Consideration must be given to the fact that these students were in the service of their country during the very years that they could have had the use of these 46-ride tickets while pursuing their educational work.

We believe that those members of the armed forces who are now attending institutions of learning are now entitled, regardless of age, to receive the benefits of these 46-ride tickets. At the present time and probably continuing for several years the number of students over twenty-one years of age will be greater than under ordinary conditions. It is reasonable to assume that the number of such students has reached its peak and will begin to taper off at the close of each semester from now on.

In considering the effect on revenues that the further use of this 46-ride ticket will have from a compensatory, or out-of-pocket viewpoint, we believe that the cost of transporting these students should be figured on an increment basis. This is on the assumption that no additional cars are required for their accommodation.

Accordingly, after notice, public hearing, investigation, and consideration, it is

Ordered: That all railroads transporting passengers within the commonwealth of Massachusetts are hereby ordered to make available not later than June 1, 1947, for use by veterans of World War II who have attained their 21st birthday and who are students at institutions of learning under the so-called G. I. Bill of Rights, the 46-ride students' commutation ticket, and it is

Further ordered: That such tickets shall be available only under like conditions as to identity and proof of qualification for the right to purchase as now required of this class of students who have not attained their 21st birthday.

SECURITIES AND EXCHANGE COMMISSION

Re Cambridge Electric Light Company et al.

File No. 70-1486, Release No. 7406
May 13, 1947

APPLICATION-DECLARATION *under Holding Company Act with respect to intercompany sale and purchase of a parcel of land; transaction permitted subject to condition as to price.*

Consolidation, merger, and sale, § 52 — Purchase price — Transaction between affiliates.

A sale of land by a gas company to an affiliated electric company should be permitted only upon condition that the purchase price be limited to the cost to the selling company rather than a higher price based on an appraisal.

By the COMMISSION: Cambridge Electric Light Company ("Cambridge Electric") and Cambridge Gas Light Company ("Cambridge Gas"), subsidiaries of New England Gas & Electric Association ("New England"), a registered holding company, have filed an application-declaration pursuant to §§ 10 and 12 of the Public Utility Holding Company Act of 1935, 15 USCA §§ 79j, 79*l*, and Rule U-43 promulgated thereunder, with respect to an intercompany sale and purchase of a parcel of land, as more fully described below.

After appropriate notice a public hearing was held and the Commission having considered the record makes the following findings:

New England, organized under the laws of Massachusetts, is solely a holding company owning investments in fourteen subsidiaries which conduct utility operations and own properties in the states of Massachusetts, New Hampshire, and Maine. It owns all of the outstanding securities of the two applicant companies both of which are organized under the laws of Massachusetts.

Cambridge Electric is engaged solely in the generation, distribution, and sale of electricity at retail in the city of Cambridge and wholesale to the town of Belmont, both in Massachusetts.

Cambridge Gas is engaged solely in the production, distribution, and sale

of gas at retail in the cities of Cambridge and Somerville, Massachusetts.

Cambridge Electric proposes to acquire from Cambridge Gas for $154,388.75 a parcel of land upon which Cambridge Electric proposes to erect a steam generating plant. This land is presently carried on the books of Cambridge Gas at $56,467.21, which amount is stated to be based upon the average cost of the parcels comprising the gas works land. It is stated that the sale and purchase price of this land was established on the basis of an appraisal made by an independent real estate appraiser. Cambridge Gas proposes to credit its surplus with the profit on the sale of the land in the amount of $97,921.54, and Cambridge Electric proposes to debit its property, plant, and equipment account with the cost to it of $154,388.75.

The proposal before us, thus, contemplates the transfer of an asset between one entirely owned subsidiary of a holding company and another entirely owned subsidiary of the same holding company at a profit of approximately 175 per cent in excess of the cost to the system. For present purposes, we consider both companies to be merely departments of New England and, viewing the system as a whole, the proposed transfer at a profit must be regarded in the nature of a write-up [1] which would be properly classified in Account 107 of the Uniform System of Accounts prescribed for electric utility companies by the Federal Power Commission and recommended by the National Association of Railroad and Utilities Commissioners. Under the circumstances and considering the potentialities of abuse present in the intrasystem profits of the nature involved here (*cf.* § 1(b) of the act, 15 USCA § 79a(b)), we are of the opinion that the proposed transaction should be so modified as to eliminate its inflationary aspects. Accordingly, we will require, as a condition to our approval of the proposed transaction, pursuant to §§ 12 and 10 of the act, that the proposed sale and acquisition be consummated only upon the basis of cost to the vendor company.

It is *ordered* that the said application and declaration be, and hereby are, approved and permitted to become effective forthwith, subject to the condition that the proposed sale by Cambridge Gas to Cambridge Electric be consummated only upon the basis of cost to the vendor company.

[1] Cf. United States v. New York Teleph. Co. (1946) 326 US 638, 90 L ed 371, 62 PUR NS 65, 66 S Ct 393.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Electric Power Companies Plan Five Billion Dollar Expansion

FIVE billion dollars will be spent by electric light and power companies in the United States on construction within the next five years, Charles E. Oakes, president of the Edison Electric Institute, said recently in announcing the publication of the industry's Statistical Bulletin covering operations of the year 1946. Construction volume by the locally operated electric power companies has already accelerated to the rate of a billion dollars a year, and this rate is expected to be maintained throughout this year and during the following four years, Mr. Oakes said.

The total of $5,000,000,000 is more than one-third of the present entire $13,000,000,000 capitalization. It will add more new generating capacity to local company plants than is presently installed in all the governmentally-owned power projects, incuding TVA, Boulder Dam, and Bonneville.

About 95 per cent of the new generating installation will consist of steam turbines using coal, oil, or gas. Despite the large increase in governmental hydro-electric developments in recent years, the installed capacity of all water power plants still comprises less than 30 per cent of the total generating installations. In 1936 it was 29 per cent and in 1926 it was 27 per cent. Within the next three or four years the percentage probably will have dropped below the 1926 figure.

The electric light and power industry completed one of the most active years of its history in 1946, the statistical bulletin states. Total sales of current by all utilities—public and private—approximated 191 billion kilowatt-hours, a decrease of one and a half per cent from that sold in 1945.

For the year 1946 as a whole, the average residential customer increased his consumption of electricity by 100 kilowatt-hours per year, bringing the total to 1,329 as compared with 1,229 the year before. This 100 kilowatt-hour gain in 1946 sets a new record in the year-to-year increase in household use.

During the year, 2,109,218 new customers were added to the books of the local electric utility systems bringing the total at the end of the year to 36,140,291. A gain of 1,800,000 in homes and farms constituted the largest number of new connections in the history of the industry. It was almost twice the 836,000 added in 1945 and exceeded by ten per cent the previous high record made in 1924.

In 1946, over 400,000 additional farms were connected to electric power lines, bringing the total at the end of the year to 3,336,000. This represents 57 per cent of the number of farms by the Census at the close of 1944. In addition to farm homes already connected, there are an additional 800,000 farms, reached by electric power lines, which have not yet taken service. The total number of farms reached is equal to three-quarters of all occupied farms in the United States.

South Atlantic Gas Co. Plans $365,000 Expansion Program

SOUTH ATLANTIC GAS COMPANY plans to spend $365,000 on expansion of facilities in central Florida this summer according to Buell Duncan, vice president of the company.

Improvements costing an estimated $250,000 are planned for the gas company's Orlando facilities and more than a hundred thousand will be spent in erection of a new plant at DeLand.

New Eclipse Special Venturi Injector Assemblies

FOR the better utilization of protane and butane gases and mixtures, Eclipse Fuel Engineering Company has developed a new series of special Venturi injector assemblies for gas plant use.

Considerable saving is claimed through the use of these injectors, as they are operated without the use of compressors, pumps, or mechanical equipment. They are said to be especially advantageous when applied to gas plant installations requiring the mixing of two gases, or a gas with air, where the primary gas is already available under utilizable pressure.

This Eclipse equipment enables gas plants using L. P. gas, to provide facilities for standby gas service, auxiliary or peak-load shaving, or retirement of old carburetted water-gas sets.

Bulletin L-210 describing the new special Venturi injector assemblies, can be obtained by writing to the manufacturer, 786 South Main street, Rockford, Illinois.

Building Maintenance Guide

"OVER THE ROUGH SPOTS," is the title of a 48-page handbook published by the Stonhard Company, which provides the answers to more than a hundred problems inherent in the maintenance and construction of all types of industrial buildings. Packed with information about floors, walls, foundations, roofs, etc., this booklet has been designed as a guide for

building owners and operators in obtaining economical, serviceable maintenance.

Containing information useful to organizations in all industries, "Over the Rough Spots," in addition, includes pages dealing with the special problems of public utilities, water works, railroads, and mines.

A free copy of this handbook may be obtained by addressing the Stonhard Company, 403 North Broad street, Philadelphia 8, Pennsylvania.

EEI Releases Planned Office Lighting Campaign

THE first large-scale program on Planned Office Lighting to be supported by utilities, manufacturers, and all other branches of the lighting industry is now ready for use, Ralph P. Wagner, chairman of the Edison Electric Institute's commercial division, has announced. A plan book outlining the promotional campaign, with sample copies of mailing pieces, sales visualizers, customer booklets and other sales aids, is now being distributed to utility commercial executives.

"Planned office lighting is a relatively undeveloped field that offers a basic, continuing and growing profit load to the utility company," Mr. Wagner declared. "The materials provided in this program are designed to help the utility sell planned lighting, carefully engineered for lasting customer satisfaction, and at the same time to combat the efforts of irresponsible fixture salesmen promoting questionable products, on a basis of low costs."

Walker Named Chief Engineer Of Consolidated Industries

CONSOLIDATED INDUSTRIES, INC. of Lafayette, Indiana, has announced the appointment of Kirby Walker, formerly chief engineer of the American Gas Machine Company, as chief engineer of Consolidated.

Mr. Walker is well known for his work in the heating and combustion fields.

Cochrane Issues Bulletin

A NEW 24-page publication describing the characteristics of the various direct-contact open heater designs, accessories, actual installation photographs, flow diagrams, etc., has been published by the Cochrane Corporation.

A copy of the publication, No. 4091, may be obtained from the manufacturer, 17th street & Allegheny avenue, Philadelphia 32, Pennsylvania.

New AC Welders Announced

THE HARNISCHFEGER CORPORATION, manufacturer of P&H welding and materials handling equipment, announces a complete new line of AC arc welders.

Literature describing these welders may be procured by writing Harnischfeger Corporation, welding division, 4400 West National avenue, Milwaukee 14, Wisconsin.

Rustrem Now Available In Aluminum

SPECO, INC., Cleveland, announces that Rustrem (Rust Remedy) anti-rust paint is now available in aluminum as well as in black.

This new paint, according to the manufacturer, can be applied right over rust without brushing or scraping. It is reputed to immediately penetrate the rust layer, render it inactive and seal the surface against further rusting.

Other features claimed are high resistance to chemical action and immunity to climatic changes.

It is especially recommended for use under water, in salt water, or in locations where dampness and moisture are ever present.

Among the most commonly listed applications in the public utilities' field are the following: metal poles, manhole covers, pipe, gratings, hydrants, etc.

Tennessee Gas and Transmission To Expand Lines

THE Tennessee Gas and Transmission Company has been authorized to construct $53,542,835 in facilities to expand the capacity of its 1,364 mile pipe line system that transports natural gas from Texas and Louisiana into Tennessee, Kentucky, and West Virginia.

The new facilities, including 542 miles of pipe line in Louisiana, 99 miles in Texas, and a Mississippi river crossing between Refuge, Mississippi, and Shives, Arkansas, are intended to boost the capacity from 381 million to 600 million cubic feet daily.

C&P Plans Large Expansion In Virginia

EXPENDITURES totaling more than $702,000 for the construction and expansion of telephone facilities throughout the state were authorized recently by the board of directors of the Chesapeake and Potomac Telephone Company of Virginia.

Approval of these expenditures brings the total allocated to date for expenditure this year to $21,746,000.

Included among the appropriations was an expenditure of $327,000 for the rearrangement and extension of outside plant facilities in the Falls Church, Arlington, and Alexandria areas, in preparation for the cutover of the new Falls Church dial center. The project includes the placing of approximately four miles of aerial cable, nine miles of underground cable and about two miles of conduit.

An expenditure of $146,000 at Belle Haven to expand aerial cable facilities and extend rural lines in this area was also approved. The expansion calls for the placing of 957 poles, 26 miles of aerial cable, and 273 single miles of wire.

More than $96,000 was appropriated to provide additional outside plant for rural service in the Manakin-Goochland area. When completed, the project, which involves the placing of 957 poles, 15 miles of aerial cable and 310

single miles of wire, will make it possible for the company to clear all pending requests for service being held because of equipment shortages.

The total expenditures approved by the directors are part of the company's $60,000,000 expansion and improvement program now under way throughout the state.

Farm Electrification Manual Published by EEI

THE EDISON ELECTRIC INSTITUTE'S Farm Electrification Manual, which is designed to serve as a technical handbook for electric company rural representatives, coöperatives managers, and others engaged in farm electrification work, is now being distributed to purchasers, the institute has announced.

The manual is prepared in section form, with each section covering a major farm use of electricity, and written by outstanding authorities in each field. A committee of 25 leading farm electrification specialists, located in every part of the country, reviewed each section and made suggestions that were incorporated in the final drafts.

A total of seven sections, on the Rural Representative and His Job; History of Farm Electrification; Farm Lighting; Mow Curing of Hay; Farmstead Wiring, and a directory of manufacturers of farm electrical equipment, are at present available. Seven additional sections are now in preparation, and will be released shortly.

The practical information on farm applications of electricity contained, with many illustrations and diagrams of wiring arrangements, installation methods for electrical equipment, etc., is expected to make the manual of use to the rural representative in almost every customer contact.

The actual preparation of the manual was accomplished by a committee of the EEI Farm Section, under the chairmanship of John L. Burgan, of the New York State Electric & Gas Corporation.

The Farm Electrification Manual is available at Edison Electric Institute, 420 Lexington avenue, New York 17, New York. The price, which includes the binder and total of 14 sections, is $5.00 per copy to EEI members, and $8.00 to non-members.

Construction Loans Announced

CONSTRUCTION loans — chiefly for distribution lines, system improvements or new or additional generating capacity — recently were made to the following enterprises by the Rural Electrification Administration:

Altamaha Electric Membership Corporation, Lyons, Ga., $50,000.

Old Capital Refrigeration Membership Corporation, Corydon, Ind., $10,000.

Jackson County Rural Electric Membership Corporation, Brownstown, Ind., $50,000.

Morrow Rural Electric Coöperative, Mount Gilead, Ohio, $65,000.

Broad River Electric Coöperative, Gaffney, S. C., $270,000.

Lynches River Electric Coöperative, Inc., Pageland, S. C., $355,000.

Berkeley Electric Coöperative, Moncks Corner, S. C., $450,000.

Moreau-Grand Electric Association, Timber Lake, S. Dak., $500,000.

West Florida Electric Coöperative Association, Graceville, Fla., $70,000.

Menard Electric Coöperative, Petersburg, Ill., $195,000.

Whitley County Rural Electric Membership Corporation, Columbia City, Ind., $95,000.

Marshall County Rural Electric Membership Corporation, Plymouth, Ind., $60,000.

Tri-County Electric Coöperative, Portland, Mich., $275,000.

Red Lake Electric Coöperative, Inc., Red Lake Falls, Minn., $450,000.

Mille Lacs Region Coöperative Power and Light Association, Aitkin, Minn., $375,000.

Edgecomb-Martin County Electric Membership Corporation, Tarboro, N. C., $75,000.

Blue Ridge Electric Membership Corporation, Lenoir, N. C., $280,000.

Davie Electric Membership Corporation, Mocksville, N. C., $130,000.

Verendrye Electric Coöperative, Inc., Velva, N. D., $600,000.

Belmont Electric Coöperative, St. Clairsville, Ohio, $625,000.

Umatilla Electric Coöperative Association, Hermiston, Ore., $180,000.

Marlboro Electric Coöperative, Bennettsville, S. C., $115,000.

Mecklenburg Electric Coöperative, Chase City ,Va., $267,000.

Illini Electric Coöperative, Champaign, Ill., $290,000.

Eastern Iowa Light and Power Coöperative, Davenport, Iowa, $650,000.

Coöperative Electric Company, St. Ansgar, Iowa, $100,000.

Salt River Rural Electric Coöperative Corporation, Bardstown, Ky., $290,000.

Choptank Electric Coöperative, Denton, Md., $492,000.

Kandiyohi Coöperative Electric Power Association, Willmar, Minn., $550,000.

Freeborn-Mower Coöperative Light and Power Assoc., Albert Lea, Minn., $425,000.

Warren Electric Coöperative, Youngsville, Pa., $150,000.

DeWitt County Electric Coöperative, Guero, Tex., $250,000.

Southside Electric Coöperative, Crewe, Va., $175,000.

St. Croix County Electric Coöperative, Baldwin, Wis., $380,000.

Tallapoosa River Electric Coöperative, Lafayette, Ala., $145,000.

Daviess-Martin County Rural Electric Membership Corp., Washington, Ind., $185,000.

Pella Coöperative Electric Association, Pella, Iowa, $110,000.

Beartooth Electric Coöperative, Red Lodge, Mont., $175,000.

Accomack-Northampton Electric Coöperative, Parksley, Va., $446,000.

Stevens County Electric Coöperative, Colville, Wash., $340,000.

PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. » » »

PROFESSIONAL DIRECTORY *(continued)*

(Professional Directory Continued on Next Page)

PROFESSIONAL DIRECTORY *(continued)*

PROFESSIONAL DIRECTORY
(concluded)

ROBERT T. REGESTER
Consulting Engineer
HYDRAULIC STRUCTURES — UTILITIES
FLOOD CONTROL — WATER WORKS
Baltimore Life Bldg. Baltimore 1, Md.

A. S. SCHULMAN ELECTRIC CO.
Contractors
TRANSMISSION LINES—UNDERGROUND DISTRIBUTION — POWER STATION — INDUSTRIAL — COMMERCIAL INSTALLATIONS
537 SOUTH DEARBORN ST. CHICAGO

SLOAN, COOK & LOWE
CONSULTING ENGINEERS
120 SOUTH LA SALLE STREET
CHICAGO
Appraisals — Reports
Operating — Financial — Plant

MANFRED K. TOEPPEN
ENGINEER
CONSULTATION—INVESTIGATION—REPORTS
MARKET AND MANAGEMENT SURVEYS
VALUATION, DEPRECIATION AND RATE MATTERS
261 Broadway New York 7, N. Y.

WESTCOTT & MAPES, INC.
ARCHITECTS & ENGINEERS
INVESTIGATIONS • REPORTS
DESIGN • SUPERVISION
New Haven, Connecticut

Representation in this Professional Directory may be obtained at very reasonable rates. Kindly address inquiries to:

ADVERTISING DEPARTMENT
Public Utilities Fortnightly
Munsey Building
Washington 4, D. C.

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

A

Albright & Friel, Inc., Engineers 30
American Appraisal Company, The 28

B

*Babcock & Wilcox Company, The .....
Barber Gas Burner Company, The 3
Black & Veatch, Consulting Engineers 30
*Blaw-Knox Division of Blaw-Knox Company ....

C

Carter, Earl L., Consulting Engineer 30
Cleveland Trencher Co., The 19
Combustion Engineering Company, Inc. 16-17
Crescent Insulated Wire & Cable Co., Inc. 23

D

Day & Zimmermann, Inc., Engineers 28
Dodge Division of Chrysler Corp. 15

E

Ebasco Services, Incorporated 5
Electric Storage Battery Company, The .....
.....Outside Back Cover
Electrical Testing Laboratories, Inc. 28

F

Ford, Bacon & Davis, Inc., Engineers 28
*Ford Motor Company .....

G

General Electric Company 25
*General Motors Truck & Coach Division .....
Gilbert Associates, Inc., Engineers 28
Gilman, W. C., & Company, Engineers 30
Grinnell Company, Inc. 27

H

Harris, Frederic R., Inc., Engineers 28

I

International Harvester Company, Inc. 20

J

Jackson & Moreland, Engineers 30
Jensen, Bowen & Farrell, Engineers 30

K

*Kinnear Manufacturing Company, The .....
Kuljian Corporation, The, Engineers 2

L

Leffler, William S., Engineers 3
Loeb and Eames, Engineers 2
Lougee, N. A., & Company 2
Lucas & Luick, Engineers 3

M

*Main, Chas. T., Inc., Engineers .....
*Marmon-Herrington Co., Inc. .....
Mercoid Corporation, The .....Inside Front Cov

N

Newport News Shipbuilding & Dry Dock Co. 2
Norwalk Valve Company .....Inside Back Cov

O

O'Neill, Frank, Public Utility Consultant 3

P

Penn-Union Electric Corporation 3
Pritchard, J. F., & Company 2
Public Utility Engineering & Service Corporation 2

R

Recording & Statistical Corp. .....
Regester, Robert T., Consulting Engineer 3
Remington Rand Inc. .....
*Ripley Company, The .....
Rust-Oleum Corporation 1

S

Sanderson & Porter, Engineers 2
Sangamo Electric Company .....
Sargent & Lundy, Engineers 3
Schulman, A. S., Electric Co., Contractors .....
Sloan, Cook & Lowe, Consulting Engineers .....
Steinberger, E. A., Engineer 3

T

Toeppen, Manfred K., Engineer 3

W

Westcott & Mapes, Inc. 2
White, J. G., Engineering Corporation, The 1

Professional Directory 28-31

*Fortnightly advertisers not in this issue.

CONNELLY DISTRICT REGULATORS

Meet Gas Company Requirements

For Low Maintenance

Sizes up to 36"

Easy Future Adjustments

Pressure up to 100 lbs.

The Connelly LC District Regulator reduces pounds to inches. It keeps outlet pressure constant and unaffected by fluctuating inlet pressures.

Self Contained

No need to fuss with fixed leverage. Connelly's inside leverage multiplies the diaphragm's closing power and provides tight lock up. You can easily adjust the linkage to meet your changing conditions.

Connelly District Regulators Are Balanced Valves

A balanced valve, the LC Connelly Regulator can be used with pressures up to 100 lbs. It's available in sizes up to 36".
The large cover plate makes for easy cleaning and servicing.
Write for further data and prices. Immediate delivery.

NORWALK VALVE COMPANY

33 Railroad Avenue South Norwalk, Conn.

SOLE MANUFACTURERS

NORWALK

VALVES • REGULATORS • GOVERNORS
GAUGES • N-50 INSPIRATOR

CONNELLY

GOVERNORS • VALVES • REGULATORS
GAUGES • MERCURY LOADERS